SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1035

THE UNITED STATES OF AMERICA, APPELLANT

vs.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

INDEX

	Original	Print
Record from D. C. U. S., Northern District of Illinois	1	1
Caption [omitted in printing]	1	
Complaint	2	1
Motion to dismiss the complaint	30	19
Memorandum, La Buy, J., on motion to dismiss	32	21
Order of dismissal	40	27
Petition for appeal	41	28
Assignment of errors and prayer for reversal	51	28
Order allowing appeal	54	30
Citation [omitted in printing]	55	
Praecipe for transcript of record	57	30
Docket entries	85	31
Clerk's certificate [omitted in printing]	89	
Statement of points to be relied upon and designation of record	90	33
Order noting probable jurisdiction	94	34

736649—47——1

1 [Caption omitted.]

2 In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action No. 46C1339

Equitable Relief Sought

UNITED STATES OF AMERICA

v.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, CAB SALES AND PARTS CORPORATION, CHECKER TAXI COMPANY, CHECKER CAB MANUFACTURING CORPORATION, AND MORRIS MARKIN

Complaint

(Filed July 25, 1946)

The United States of America, by its attorneys, acting under the direction of the Attorney General, brings this complaint against the defendants named herein, and upon information and belief alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," said Act being commonly known as the Sherman Act," against the defend-
3 ants named herein in order to prevent and restrain violations by them of Sections 1 and 2 of said Act.

2. The defendants Yellow Cab Company, Chicago Yellow Cab Company, Inc., Parmelee Transportation Company, Cab Sales and Parts Corporation, and Checker Taxi Company transact business within the Eastern Division of the Northern District of Illinois, and are found therein.

II

DESCRIPTION OF THE DEFENDANTS

3. The following corporations and persons are hereby named defendants herein:

"(a) Yellow Cab Company, a Maine corporation, with principal offices at 57 East 21st Street, Chicago, Illinois. This defendant is hereinafter referred to as 'Yellow.' It operates the 'Yellow' cabs in Chicago, Illinois, and vicinity.

"(b) Chicago Yellow Cab Company, Inc., a New York corporation, with principal offices at 57 East 21st Street, Chicago, Illinois. This defendant is hereinafter referred to as 'Chicago Yellow.' It is a holding company owning all of the capital stock of Yellow as well as all of the capital stocks of Benzoline Motor Fuel Co., an Illinois Corporation, and Utilities Motor Fuel Co., Inc., an Indiana corporation. These two concerns sell gasoline and oil in Chicago and vicinity, primarily to cab operating companies. Chicago Yellow also owns 49 percent of the capital stock of Transportation Maintenance Corporation, an Illinois corporation, which services and repairs cabs in Chicago, as well as 45 percent of the capital stock of General Transportation Casualty and Surety Co., a New York corporation, which insures cab operating companies; and 7.8 percent of the capital stock of defendant Checker Cab Manufacturing Corporation.

4 "(c) Parmelee Transportation Company, a Delaware corporation, with principal offices at 300 North Desplaines Street, Chicago, Illinois. This defendant is hereinafter referred to as 'Parmelee.' It operates cabs in Chicago to transport passengers and their luggage from one railroad station to another, pursuant to contracts with railroads and railroad terminal associations. Parmelee owns 29.5 percent of the outstanding capital stock of Chicago Yellow, and 10 percent of the capital stock of General Transportation Casualty and Surety Co. It also owns all of the capital stock of each of the following corporations:

"'(1) National Transportation Co., Inc., a New York corporation, which operates cabs in New York, N. Y.;

"'(2) Parmelee System, Inc., a New York corporation, which, among other things, manages the operations of National Transportation Co., Inc.;

"'(3) Yellow Cab Company of Pittsburgh, a Pennsylvania corporation, which operates cabs in Pittsburgh, Pennsylvania;

"'(4) Pittsburgh Transportation Company, a Pennsylvania corporation which also operates cabs in Pittsburgh; and

"'(5) Yellow Taxi Company of Minneapolis, a Minnesota corporation, which operates cabs in Minneapolis, Minnesota.'

"(d) Checker Cab Manufacturing Corporation, a New Jersey corporation, with principal offices at Kalamazoo, Michigan. This defendant is hereinafter referred to as 'CCM.' It manufactures and sells cabs. CCM owns 61.75 percent of the outstanding capital stock of Parmelee and 30 percent of the capital stock of General Transportation Casualty and Surety Company.

"(e) Cab Sales and Parts Corporation, an Illinois corporation, with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois. It operates the 'Checker' cabs in Chicago and vicinity. A predecessor corporation of the same name was incorporated in Delaware in 1930. In 1938, the assets of the predecessor were transferred to the defendant corporation and the predecessor was dissolved. Both concerns are hereinafter referred to as 'Cab Sales.' Cab Sales owns 1.59 percent of the outstanding capital stock of Chicago Yellow, 15 percent of the capital stock of General Transportation Casualty and Surety Co., and 51 percent of Transportation Maintenance Corporation. It also owns 35.7 percent of the outstanding capital stock of CCM.

"(f) Checker Taxi Company, a Delaware corporation, with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois. It operated 'Checker' cabs in Chicago and vicinity from December 1931 until about 1941. Its predecessor of the same name, an Illinois corporation, operated 'Checker' cabs in Chicago and vicinity from about 1919 until its operations were transferred to the defendant. Both concerns are hereinafter referred to as 'Checker.' At the present time, Checker has no employees and no property other than an interest in 1,000 taxicab licenses issued to it annually by the city of Chicago, which licenses are leased by it to Cab Sales for $180 per year per license. Four hundred fifty shares of the capital stock of Checker are owned by 18 former cab drivers, who possess 25 shares each, and the remaining 60,550 shares are owned by a partnership composed of Michael M. Sokoll, George McDonald, Julius Jessner, R. E. Oakland, J. E. King, and M. H. Freimark, each of whom are officers, directors, or former officers or directors, of either Cab Sales or CCM.

"(g) Morris Markin, president of CCM, and a resident of Kalamazoo, Michigan. Markin owns all of the capital stock of Cab Sales, 12.2 percent of the outstanding capital stock of CCM, and 0.13 percent of the outstanding capital stock of Chicago Yellow."

III

NATURE OF THE TRADE AND COMMERCE INVOLVED

4. The city of Chicago, Illinois, is the terminus of a large number of railroads engaged in the transportation of passengers among a majority of the States of the United States. A few passengers are transported through Chicago by rail, but it is necessary for the great majority of them, including those traveling from one State to another, to get off the trains by which they treveled to Chicago, to go to another station from two city blocks to two miles distant, and to board other trains operated by other railroads. A sub-

stantial number of said passengers in interstate commerce use cabs operated by Yellow, Cab Sales, Parmelee, and others, in transporting themselves and their luggage from one station to another as aforesaid.

5. Many persons, in the course of travel from their homes, offices, or hotels in Chicago to destinations in other States, commence their travel by using cabs operated by Yellow, Cab Sales, and others to transport themselves and their luggage to railroad stations in Chicago.

6. Many persons in the course of travel from points in other States to homes, hotels, and offices in Chicago complete said travel by using cabs operated by Yellow, Cab Sales, and others to transport themselves and their luggage from railroad stations in Chicago to said homes, hotels, and offices.

7. CCM manufactures motor vehicles for use as cabs at its factory in Kalamazoo, Michigan, and ships them to Parmelee, Yellow, and Cab Sales in Chicago, Illinois. CCM also ships them to subsidiaries of Parmelee in New York City, Pittsburgh, and Minneapolis. All motor vehicles purchased by Cab Sales for use as cabs, and all purchased by Chicago Yellow and the cab-operating
7 subsidiaries of Parmelee, between the time Parmelee acquired part of their stock and the beginning of the investigation leading to this complaint, have been manufactured by CCM and sold and shipped in interstate commerce from Kalamazoo, Michigan.

IV

BACKGROUND OF THE CONSPIRACY

8. In the month of January 1929, when the conspiracy alleged herein began:

"(a) Yellow, as now, was engaged in operating 'Yellow' cabs in Chicago. It held 2,350, or 44 percent of the 5,289 taxicab licenses issued by the city of Chicago; and it had never purchased cabs from CCM.

"(b) Chicago Yellow, as now, owned all of the capital stock of Yellow. It did not own any stock of CCM.

(c) Parmelee had not been incorporated. The present cab-operating subsidiaries of Parmelee, and their predecessors, were independent concerns. The business of transporting passengers between railroad stations in Chicago pursuant to contracts with railroads and railroad terminal associations was conducted by The Parmelee Company, a corporation which was dissolved in May 1934. Neither The Parmelee Company nor any of the present cab-operating subsidiaries of Parmelee, nor their predecessors, owned any stock of Chicago Yellow.

"(d) Checker was a so-called 'cooperative' cab operating company in Chicago. It held 1,750 city taxicab licenses, or 33 percent of the 5,289 issued. Its stockholders consisted of a large number of owners of 'Checker' cabs. Each stockholder contracted with Checker to pay a fee or commission for services rendered by Checker in repairing and maintaining his cabs, providing
8 gasoline, oil, tires, and parts, insurance, licensing, and legal and other services. Each cab owner also agreed that the record title of his cabs should rest in Checker, that Checker would take out city licenses for said cabs in its own name, and would permit said stockholders to use said city licenses in the operation of their cabs.

"(e) CCM did not own any stock in Chicago Yellow, Checker, or The Parmelee Company.

"(f) Markin was president and general manager of CCM."

9. The city of Chicago issued 5,289 taxicab licenses in 1929, of which, in addition to the 2,350 issued to Yellow and 1,750 to Checker, 400, or 8 percent, were issued to DeLuxe Motor Cab Company, a substantial part of which was owned by Markin, and the remaining 789, or 15 percent, were issued to others.

10. Prior to 1929, the ordinances of the city of Chicago did not restrict or limit the number of taxicab licenses which might be issued. In September of that year, the city of Chicago enacted an ordinance providing that no taxicab licenses should thereafter be issued unless the Public Vehicle License Commission should, after hearing, by resolution, declare that public convenience and necessity required the issuance of such licenses, provided that such declaration of public convenience and necessity should not be necessary for the licensing of the same number of taxicabs licensed for operation and operated by the applicant under the same name and colors on September 15, 1929, or the renewal annually thereafter of the same number of licenses.

11. In May 1934, the city of Chicago enacted an ordinance providing that no license should thereafter be issued except upon transfer to permit replacement of a taxicab, or, in the
9 annual renewal of outstanding licenses, unless the Public Vehicle License Commission, after a hearing, by resolution, should declare that public convenience and necessity required additional taxicab service.

12. On December 22, 1937, the city of Chicago enacted an ordinance providing that in the event that a sufficient number of taxicab licenses should be surrendered by licensees to reduce the number of taxicabs in the city of Chicago to 3,000 on or before March 31, 1938, no taxicab license should thereafter be issued except upon transfer to permit replacement of a taxicab or in the annual renewal of any such license, or upon assignment of any such license, or upon

assignment of the right to apply for such license as subsequently provided, or upon the revocation for cause or termination in any other manner of any other license. This ordinance further provided that the city of Chicago, by ordinance, might authorize the issuance of licenses in excess of 3,000 without consent of existing licensees, provided that those licensees who voluntarily surrendered any taxicab licenses or their right to renew any taxicab licenses on or before March 31, 1938, should have the prior right to secure licenses issued above the figure of 3,000, up to the number of licenses so surrendered by them, unless such licensees should have released their right to apply for such additional licenses or should have failed to make application therefor within thirty days after publication of notice of public hearing upon the question of public convenience and necessity for the issuance of additional licenses. The ordinance further provided that as between licensees having a prior right by virtue of their surrender of licenses, to any new licenses in excess of 3,000, additional licenses should be apportioned ratably between such licensees having such prior right in the proportion which the number of licenses surrendered by each licensee bears to the number surrendered by all licensees. The ordinance further provided that it should become effective when one or more licensees should file with the City Clerk formal written acceptance of the ordinance and should have surrendered at least 616 taxicab licenses. The 1937 ordinance expired, by its terms, on December 31, 1945, but, in June 1945, was extended for another five years.

13. The Circuit Court of Cook County held, in February 1946, in a suit by Yellow and Checker against the city of Chicago, that the acceptance of the 1937 ordinance by Yellow and Checker constituted a contract between the city of Chicago and Yellow and Checker. It also held that, by the terms of this contract, the city of Chicago was precluded from issuing taxicab licenses in excess of 3,000 without the consent of Yellow and Checker until after it had first replaced those surrendered by Yellow and Checker in 1938.

14. At the time of filing this complaint, about 3,275 cab licenses were outstanding in the city of Chicago, of which 1,595 were issued to defendant Yellow, 1,000 to defendant Checker, which leased them to Cab Sales, and 680 were issued to so-called "independents." (When the investigation leading to this complaint was begun early in March 1946, there were only 3,000 outstanding licenses and only 405 issued to independents.) In addition, Parmelee operates 85 non-licensed cabs in transferring passengers between railroad stations in Chicago. Defendant Markin controls

the management and operations, including purchases of motor vehicles for use as cabs, of Yellow, Cab Sales, and Parmelee.

11 15. Some 13,000 licenses to operate cabs are now outstanding in the city of New York, of which 2,000 are held by National Transportation Co., Inc., a wholly owned subsidiary of defendant Parmelee. The purchase of motor vehicles for use as cabs by National Transportation Co., Inc. is controlled by Markin.

16. One-half of the cabs in Pittsburgh are operated by Pittsburgh Transportation Co., and the other half are operated by Yellow Cab Co. of Pittsburgh. Both of these concerns are wholly owned subsidiaries of Parmelee and their purchase of motor vehicles for use as cabs is controlled by Markin.

17. Of the 214 cabs licensed in Minneapolis, 125 are operated by Yellow Taxi Co. of Minneapolis which is a wholly owned subsidiary of Parmelee. The purchase of motor vehicles for use as cabs by this concern is controlled by Markin.

V

OFFENSES CHARGED

18. Beginning about January 1929 and continuing thereafter up to and including the date of filing this complaint, the defendants have been and now are engaged in a combination and conspiracy to restrain and to monopolize interstate trade and commerce in the sale of motor vehicles for use as cabs to the principal cab operating companies in Chicago, Illinois, Pittsburgh, Pennsylvania, New York, New York, and Minneapolis, Minnesota, and in the business of furnishing cab services for hire in the city of Chicago, Illinois, and its vicinity, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," said Act being

12 commonly known as the "Sherman Act." Defendants threaten to continue such offenses and will continue them unless the relief hereinafter prayed for in this complaint is granted.

19. The aforesaid combination and conspiracy to restrain and to monopolize has consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been that defendants agree:

"(a) To control the operation, and the purchase, of motor vehicles for use as cabs, by the principal cab-operating companies in Chicago, New York, Pittsburgh, and Minneapolis;

"(b) That each such operating company will purchase and use as cabs only motor vehicles manufactured by CCM; and will not purchase for such use, or use, any motor vehicles made by other cab or automobile manufacturers;

"(c) Yellow and Cab Sales will not attempt to compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers and their luggage between railroad stations in Chicago;

"(d) Parmelee will not compete with Yellow or Cab Sales by seeking to engage, or engaging in the business of transporting passengers for hire in the city of Chicago and its vicinity except by contract with railroads and railroad terminal associations;

"(e) To reduce the total number of taxicabs operated in the city of Chicago to 3,000, thereafter to induce the city of Chicago to enact an ordinance reducing the total number of taxicab licenses issued to 3,000, and to oppose and prevent any increase in the number of said taxicabs and licenses above 3,000;

"(f) That Yellow and Checker will hold 2,595 of the 3,000 licenses issued by the city of Chicago, dividing them 1,595 to Yellow and 1,000 to Checker; that they would secure and divide among themselves, in a ration of 60 percent to Yellow and 40 percent to Checker, any licenses above 3,000 which might be subsequently issued by the city of Chicago;

"(g) That Checker will lease all of its licenses to Cab Sales for $180 per year per license;

"(h) Yellow and Cab sales will not compete with each other by using a make or style of cab other than that manufactured by CCM or by providing more or better service to passengers; and

"(i) That Checker and Yellow would prevent new operators, including veterans, from entering the cab business in Chicago and vicinity by annually renewing cab licenses for cabs they did not operate and had no intention of operating."

Said combination and conspiracy has been formed and effectuated by divers means and methods, including the acts, agreements, and understandings hereinafter set forth.

20. About January 1929, Markin, then president of CCM, Ernest H. Miller, president of Yellow Taxi Corp., New York, and J. A. Sisto & Co., investment bankers owning 20 percent of the outstanding stock of CCM, commenced negotiations to merge the more important cab operating companies in New York, Chicago, and other cities. One of the principal purposes of the proposed merger was to insure that these cab operating companies would thereafter purchase all of their motor vehicles for use as cabs from CCM and would not buy them from competitors of CCM. This plan of merger was thereafter carried out.

21. In furtherance of the plan, defendant Parmelee was organized April 12, 1929. It was financed in part by CCM, which purchased preferred stock and debentures for about $1,400,000. Ernest H. Miller became the first president and a director of Parmelee. Two of the other directors were also directors of CCM.

14 In return for its stock and debentures, Parmelee promptly acquired 26 percent (106,819 shares) of the outstanding stock of Chicago Yellow, 96 percent (19,300 shares) of the outstanding stock of The Parmelee Company, 68 percent (85,659 shares) of Yellow Taxi Corp., New York, and $2,052,417.50 in cash. During June 1929, Parmelee purchased an additional 8,350 shares of Chicago Yellow. During the same year, it purchased the remainder of the stock of The Parmelee Company and 22,341 shares of Yellow Taxi Corp., New York, to increase its holdings in the latter company to 86 percent of the total stock.

22. The Parmelee Company was dissolved in May 1934 and its business of transporting passengers between railroad stations in Chicago was taken over by defendant Parmelee.

23. Parmelee has, since its first acquisition of stock in Chicago Yellow, continuously owned a sufficiently large number of shares of such stock to control the policies and operations of Chicago Yellow and has controlled them. Parmelee's control of Chicago Yellow has, in turn, been controlled by Markin.

24. The operation of cabs in New York City by the various cab-operating companies acquired by Parmelee from time to time following 1929, including Yellow Taxi Corp., New York, and Motor Cab Transportation Co., have now been consolidated in National Transportation Co., Inc., a wholly owned subsidiary of Parmelee. Motor Cab Transportation Co. was purchased by Parmelee from CCM in September 1930, and 422,787 shares of common stock of Parmelee was paid to CCM as part of the transaction. Since the acquisition of this stock, CCM has continuously owned more than 51 percent of the capital stock of Parmelee.

25. Parmelee acquired 74 percent of the capital stock of

15 Yellow Cab Company of Pittsburgh in June 1929, and another 9.7 percent before the end of 1929. Parmelee has continuously owned more than 51 percent of said stock ever since. In October 1929, Parmelee acquired all of the outstanding stock of Pittsburgh Transportation Company and has continuously owned said stock ever since. In June 1930, Parmelee acquired Red Cab Company, a competing Pittsburgh cab-operating company, and merged its operations with its other two Pittsburgh subsidiaries, thereby acquiring a complete monopoly of the business of operating cabs in Pittsburgh.

26. Parmelee caused the formation of Yellow Taxi Company of Minneapolis, a Delaware corporation, in February 1931, to operate

cabs in Minneapolis. Parmelee acquired all of its stock upon its formation, and owned it at least until December 31, 1933. The assets of the Delaware corporation were then transferred to a Minnesota corporation of the same name in return for the capital stock of the latter. The Delaware corporation was then dissolved. Parmelee has continuously owned all of the capital stock of the Minnesota corporation since the dissolution of the Delaware concern.

27. In October 1929, DeLuxe Motor Cab Company was the third largest concern operating cabs in Chicago, with about 400 city taxicab licenses, and a substantial interest in DeLuxe was owned by Markin. At that time, Markin offered to sell all stock in DeLuxe to Parmelee for $388,000, or $100,000 and 16,000 shares of Parmelee, Parmelee also to assume liability for $332,000 in mortgages notes held by CCM. DeLuxe owned approximately 308 cabs, valued at about $363,000. Parmelee considered that, although DeLuxe had been losing money, its net worth, aside from the value of its taxicab licenses, exceeded its liabilities by about $92,000 as of August
16 1929. Parmelee also considered that the value of the city taxicab licenses held by DeLuxe, because of the 1929 city ordinance tending to limit the number of taxicab licenses in Chicago, was at least $1,000 per license, or $400,000. In addition, Parmelee considered that the purchase of the DeLuxe stock would be of value since such purchase would effectively prevent other interests not then operating in Chicago from acquiring DeLuxe and Parmelee would "control the operation of two out of the three large operating companies" in Chicago. These three were Yellow, DeLuxe, and Checker. Parmelee accepted the proposal of Markin and in February 1930 purchased, through General Transportation Company, a wholly owned subsidiary of Parmelee formed for this purpose, all outstanding stock of DeLuxe for $388,000, it being agreed that Markin and one Paul L'Amoreaux, who also owned a substantial interest in DeLuxe, would purchase 16,000 shares of Parmelee stock at $18 per share.

28. In 1930 Parmelee and M. M. Sokoll, president and director of Checker, caused the consolidation of DeLuxe and certain independent cab companies into a new company, Chicago Cab Company, one of the purposes of the consolidation being to prevent some outside company from entering the taxicab operating field in Chicago in competition with Yellow. In 1932, Cab Sales acquired a substantial interest in Chicago Cab Company. In July 1932, it caused the company to suspend operations and the drivers to enter into contracts with Checker. This action was approved by CCM as it would assist in preventing interests hostile to CCM from obtaining a competitive position in Chicago.

29. The Transportation Management Corp., a Delaware corporation, became a wholly owned subsidiary of Parmelee in
17 April 1929, and in that month it entered into so-called management contracts with Yellow, The Parmelee Company and Yellow Taxi Corp., New York. These contracts were substantially identical in their terms except for amounts of payments to be made by the cab operating companies. Each operating company agreed, among other things, that it would not make any purchase of more than $500 without consulting and obtaining the approval of the management company, and that all purchases, the advertising policy, and the employment and activities of departmental heads and superintendents would be supervised by the management company. Each contract provided that Ernest H. Miller, then president of both Parmelee and of the management company, would, as long as he was president of the management company, perform some of the said management. Miller became a director of Chicago Yellow and of Yellow in May 1929 and held these positions, as well as the presidency of Parmelee and of the management company, until 1932. Miller was, in 1929, and had been, a co-conspirator with Markin in formulating and carrying out the conspiracy charged in this complaint. For these so-called management services Yellow agreed to pay $50,000.00 annually to the Transportation Management Corp., The Parmelee Company agreed to pay $25,000.00 and Yellow Taxi Corp., New York, agreed to pay $50,000.00.

30. About the same time The Transportation Management Corporation agreed to manage the cab-operating companies, it entered into contracts with Markin and Ernest H. Miller. It agreed to pay Markin $25,000.00 annually to act as its management advisor and agreed to pay Miller $50,000.00 annually to act as its general manager. The contract with Miller remained in effect until
18 July 1932. The contract with Markin stated that Markin had no obligation to devote any specified or substantial portion of his time in rendering such services. Markin has continuously, since May 1929, been management advisor to The Transportation Management Corp. and, since May 1934, to its successor, Parmelee.

31. The Transportation Management Corp. was dissolved in May 1934 and its management functions and contracts were assumed by Parmelee. Parmelee continuously owned all of the capital stock of The Transportation Management Corp. from the time it first acquired it until the company was dissolved.

32. The terms of the management contracts described in paragraph 29 hereof have continued in effect substantially unchanged,

through being incorporated in new contracts, except as to the sums paid thereunder, until the date of filing of this complaint. As Parmelee acquired additional subsidiaries following 1929, it caused them to enter into substantially identical management contracts.

33. Automotive Sales Corporation was incorporated in Delaware in April 1929. Three days later all of its stock was purchased by Parmelee for $1,000 and CCM agreed to give it 5 percent commission on all cabs sold by it for CCM prior to April 30, 1934. A few days after the contract was executed, Automotive Sales Corporation ordered 1,000 cabs from CCM for Yellow. Yellow paid $1,906.00 for each of these cabs, and Automotive Sales was paid the sum of $95.30 per cab by CCM as its commission. This sum was included in the price paid by Yellow for said cabs.

34. Cab Sales was incorporated in January 1930, and said company has been managed and operated since that time by defendant Markin, who has been the owner of all outstanding stock of Cab Sales since about 1934. In February 1930, CCM settled
19 litigation between it and Checker. As part of the settlement, Checker agreed that its drivers would purchase all motor vehicles for use as cabs from Cab Sales for a period of five years at a price $2,350 per cab, this price to be adjusted in proportion to changes in the list price of cabs manufactured by CCM. At about the same time, CCM appointed Cab Sales as exclusive agent for sales to Checker and agreed to sell cabs to Cab Sales at $1,906 per cab, this price likewise to be adjusted in proportion to changes in the list price. Thereafter, during the ensuing five years, large numbers of cabs were purchased by Checker drivers from Cab Sales, which in turn purchased said cabs from CCM at prices about $400 lower than the prices paid by said drivers.

35. Cab Sales on May 1, 1931, borrowed the sum of $500,000 from Yellow to finance its acquisition of 51 percent of the capital stock of Checker. Yellow loaned the money to Benzoline Motor Fuel Co., another wholly owned subsidiary of Chicago Yellow, which then reloaned it to Cab Sales. Cab Sales agreed to repay the loan in installments, the last payment to be made in 1941. Part of the consideration for said loan was the agreement by Cab Sales that it and Checker would purchase from Benzoline all gasoline and lubricating oils used in the operation of "Checker" Cabs.

36. In May 1932, Cab Sales defaulted on the first payment due on the said $500,000 loan and Benzoline extended the due dates of payments. In October 1932, Yellow loaned $180,000 to its substantially wholly owned subsidiary, The Waverly Corporation, a holding company, which, during the same month, loaned Cab Sales another $200,000, also to be repaid over a ten-year period.

Waverly made the loan in order that Cab Sales might finance its acquisition of additional shares of Checker.

37. From November 1932 until September 1942, Cab Sales continuously owned more than 97 percent of the capital stock of Checker. In September 1942, Markin caused Cab Sales to sell its holdings in Checker to its present owners in order to make them full associates in Markin's taxicab operations in Chicago.

38. Beginning in the year 1931, some drivers for Checker began to default on their payments for cabs purchased from Cab Sales. About the year 1932, Cab Sales began to foreclose on delinquent mortgage notes and to take over the ownership and operation of cabs. By 1936, Cab Sales actually owned and operated about 500 of the total number of taxicabs licensed to Checker. Thereafter, Cab Sales extended its ownership of cabs licensed to Checker and owned all of them by June 1941. Since that time, it has owned and operated all cabs for which Checker has city taxicab licenses.

39. From the month of May 1931 to the present time, defendant Markin has actually controlled and directed the operation of all taxicabs for which Checker has held licenses from the city of Chicago.

40. In 1933 CCM prevented a divorcement of Yellow from Parmelee. In August of that year, Yellow and Parmelee agreed that Parmelee would sell all of its 48,730 shares of Chicago Yellow stock to Yellow for the purpose, among others, of quieting newspaper criticism of Parmelee as "a gigantic taxicab monopoly spreading over the whole country" and because divorcement of Chicago Yellow from Parmelee might convince the Chicago Board of Aldermen that previous criticism was unjustified and might induce them to raise taxicab rates which the Board had recently reduced. CCM, as owner of more than 51 percent
21 of the stock of Parmelee, objected to this transaction and Parmelee and Yellow agreed to rescind their agreement of sale. In December of the same year, CCM loaned Parmelee $197,500 with which to exercise an option to purchase from Yellow an additional 25,000 shares of stock in Chicago Yellow.

41. By the year 1937, the total number of cab licenses issued by the City of Chicago was 4,071, of which 2,166 or 53 percent were issued to Yellow; 1,500, or 37 percent, were issued to Checker; and 405, or 10 percent, were issued to other cab operato

42. About April 1937 Checker agreed with Yellow to reduce the number of cabs operated under its taxicab licenses. Yellow agreed to pay Checker one-half of the gross revenue lost by the latter by reason of fewer payments from drivers for its services. Pursuant to this agreement Checker reduced its cabs by about 336

during 1937 to a total of 1,164. During the same period Yellow reduced the number of its cabs by 155 to a total of 1,495.

43. In the summer of 1937, at the suggestion of Parmelee, Yellow and Checker agreed to induce the City of Chicago to reduce the total number of taxicab licenses to not more than 3,000, of which 1,500 would be issued to Yellow and 1,000 to Checker.

44. On January 3, 1938, following the enactment of the taxicab ordinance of December 22, 1937, referred to in paragraph 12 of this complaint, a contract was entered into between Yellow, Cab Sales, and Checker, which recited that under the terms of the ordinance of 1934, and by filing acceptance thereof, defendant Yellow had secured to itself the right to hold, own, and operate 2,166 taxicab licenses; the defendant Checker had secured to itself the right to hold, own, and operate 1,500 of said licenses; that

22 defendant Yellow was not operating and had not for more than ninety days operated 511 of the licenses owned by it and did not have equipment available for the purpose of exercising the rights and privileges conferred on it by reason of such licenses, and therefore Checker maintained that each of said 511 licenses was immediately subject to forfeiture on complaint to the Mayor of the City of Chicago in accordance with the provisions of the ordinance of May 18, 1934; that the parties to said contract were desirous of securing a reduction in the number of taxicab licenses in the City of Chicago to not more than 3,000 but that Checker was unwilling to accept the provisions of said ordinance and to relinquish any of its licenses without compensation therefor; and that Yellow was desirous of accepting the provisions of said ordinance and in making possible a reduction in the number of outstanding licenses to 3,000. In view of these considerations, defendant Checker promised to relinquish for cancellation by the City of Chicago 500 taxicab licenses held by it; and to sell to Yellow the right of Checker, under said ordinance, to renew and obtain reissuance of 240 of the said 500 licenses to be surrendered by Checker. Defendant Yellow agreed to pay to Checker the sum of $550 per license for each taxicab license relinquished by Checker up to 500 licenses, for a total payment by Yellow to Checker of $320,000, which, at the option of Yellow, could be paid in the notes issued by Cab Sales in return for the $500,000 and $200,000 loans described in paragraphs 35 and 36 of this complaint. Said contract further provided that in the event that additional licenses above the number of 3,000 should be issued by the City of Chicago, over and above the number of licenses surrendered by Yellow and Checker, that Yellow would apply for and both parties would attempt to secure for it 60 percent of

all such additional licenses; and that Checker would apply
23 for, and both parties would attempt to secure for Checker 40 percent of such additional licenses, to the end that the total number of such additional licenses should be divided between Yellow and Checker on the basis of three-fifths to Yellow and two-fifths to Checker. Pursuant to said agreement, Checker surrendered 500 licenses for cancellation by the City of Chicago.

45. In addition to the above contract, Yellow agreed with Checker that it would surrender to the City of Chicago for cancellation a sufficient number of licenses to bring the total number of licenses down to the figure of 3,000, and Yellow did so surrender 571 licenses.

46. Beginning at some time prior to 1937, the precise time being unknown to plaintiff, and continuing to the date of filing this complaint, Cab Sales and Yellow have exchanged monthly statistics on their respective operations of cabs. Parmelee and CCM have, at various times during this period, acted as the intermediary for the exchange of these reports.

47. In 1938 the General Transportation Casualty Co., a New York corporation, was organized by Chicago Yellow, CCM and Cab Sales, for the purpose, among other things, of insuring taxicab companies against personal injury and property damage claims. In 1939 the company was reorganized and the name changed to the General Transportation Casualty and Surety Co. In 1944, the capital of the corporation was increased and Parmelee became an additional shareholder. This concern insures the cab operations of the defendants.

48. In 1938 Transportation Maintenance Corp., an Illinois corporation, was formed by Chicago Yellow, Parmelee, and Checker
24 for the purpose of servicing all motor vehicles operated by each in the City of Chicago and vicinity. Prior thereto, each had serviced its own vehicles.

49. In the years 1936 and 1937 Yellow made application for and received 2,166 taxicab licenses, although it never operated more than 1,719 cabs at any time during said years, and for a short period it operated only 1,325. During the years 1938 to 1945, inclusive, Yellow applied for and received 1,595 taxicab licenses. The maximum number of cabs operated by it during each of said years is as follows: 1,495 in 1938; 1,351 in 1939; 1,173 in 1940; 1,338 in 1941; 1,450 in 1942; 1,400 in 1943; 1,200 in 1944; and 1,100 in 1945. During the period from June 1944 to January 1946, defendant Yellow has placed on the streets a daily average of less than 1,100 taxicabs. During the period from 1942 to 1946, Yellow continually had in storage 145 taxicabs on which annual licenses were secured, but

which cabs were never removed from storage. Yellow annually applied for and received 1,595 taxicab licenses from 1938 to 1945, knowing it would not utilize all of said licenses to operate cabs.

50. During each of the years 1939 to 1941, inclusive, Checker applied for and received 1,000 taxicab licenses. The maximum number of cabs operated under the licenses during these years is as follows: 927 in 1939; 920 in 1940; and 928 in 1941. During 1945 Checker and Cab Sales together did not have available for operation as many cabs as Checker had licenses; and Checker made application for the renewal of 1,000 licenses in 1945 knowing that neither it nor Cab Sales would utilize all of them to operate cabs.

51. On January 16, 1946, the Board of Aldermen of the City of Chicago passed a resolution authorizing the issuance of 250 licenses to veterans and, on January 22, 1946, the Public Vehicle License Commissioner of the City of Chicago issued notice to Yellow and Checker that he would cancel 234 licenses previously issued to Yellow and 87 previously issued to Checker, by reason of their failure to operate the number of taxicabs for which licenses had been issued.

52. Yellow thereupon instituted suit, in which Checker intervened as party plaintiff, to enjoin the City of Chicago and its officials from issuing said additional 250 licenses and from cancelling existing licenses issued to said defendants, and in support of said suit made representations and filed affidavits with the Court that causes beyond the control of Yellow and Checker made it impossible for them to procure taxicabs to replace those which had become inoperable, or to procure new parts for replacement in and repair of their taxicabs. In fact, Yellow, Checker, and Cab Sales could have purchased and placed in operation enough additional motor vehicles to operate a cab for each license if they had been willing and free to purchase motor vehicles manufactured by others than CCM.

VI

EFFECTS OF THE CONSPIRACY

53. The aforesaid combination and conspiracy has had, as was intended by the defendants herein, the following effects:

"(1) Competition between Checker, Cab Sales, and Yellow has been eliminated;

"(2) Competition between Checker, Cab Sales, and Yellow, on the one hand, and Parmelee, on the other hand, in the transportation of passengers and their luggage in the City of Chicago and vicinity has been eliminated and prevented;

"(3) Since the year 1929, Yellow, Checker, Cab Sales, Parmelee, and Parmelee's cab operating subsidiaries in New York, Pittsburgh, and Minneapolis have been prevented and precluded from purchasing new motor vehicles for use as cabs from any manufacturer other than CCM, and other manufacturers of motor vehicles capable of use as cabs have been excluded from the opportunity of competing for said business;

"(4) By reason of said conspiracy, Yellow, Checker, and Cab Sales, and Parmelee and its subsidiaries, have been required to pay more for motor vehicles purchased and operated by them as cabs than they would have had to pay in the absence of said conspiracy, and other expenditures by said cab operating companies have been unnecessarily increased, which unnecessary expenditures have been reflected in, and have resulted in, high rates being charged the public for the transportation services rendered by said companies;

"(5) By reason of said conspiracy, defendants have successfully excluded others, including veterans, from the opportunity to secure taxicab licenses from the city of Chicago and from the opportunity of participating in the operation of cabs in said city and its vicinity.

"(6) By reason of said conspiracy, Yellow, Checker and Cab sales have not operated their cabs to the extent reasonably necessary to meet the public demand for cab service."

PRAYER

Wherefore, Plaintiff prays:

A. That, pursuant to Section 5 of the Sherman Act, an order be made and entered herein requiring each of the defendants as are not within this District to be brought before the Court in this proceeding as parties defendant, and directing the
27 Marshals of the Districts in which they severally reside to serve summons upon them.

B. That the aforesaid combination and conspiracy in restraint of trade and conspiracy to monopolize be adjudged and decreed to be unlawful.

C. That defendants be required to release and waive any and all rights they may have or claim to have under the ordinance of the City of Chicago of December 22, 1937, and its extension, to secure additional taxicab licenses in excess of the number now held by Yellow and Checker.

D. That the agreement of January 3, 1938, between Yellow, Cab Sales, and Checker be declared to be illegal and of no force and

effect, and that each party thereto be enjoined from enforcing, from attempting to enforce, and from observing any of the provisions thereof, and from entering into any similiar agreement or understanding.

E. That the agreement between Parmelee and Markin, by which Markin is employed as advisor to Parmelee, shall be declared to be illegal and of no force and effect, and that Parmelee and Markin be enjoined from enforcing or attempting to enforce, and from observing any of the provisions thereof, and from entering into any similar agreement or understanding.

F. That all so-called management contracts entered into between Yellow, Chicago Yellow, and Parmelee or any of its subsidiaries, be declared to be illegal and of no force and effect, and that each defendant be enjoined from enforcing or at attempting to enforce them, from observing any of the provisions
28 thereof, and from entering into any similar agreement or understanding.

G. That Markin be required to divest himself of all stock or other interest in, or control over, Yellow, Chicago Yellow, Parmelee and all subsidiaries or affiliates of Parmelee, and be enjoined from hereafter acquiring any interest in, or ownership of stock of, or any control over any defendant or its subsidiaries other than CCM, Cab Sales, and Checker.

H. That the corporate defendants be required to divest themselves of all interest in, and ownership of stock of, each other, and of control of each other, to the end that each of the following groups of defendants shall be independent of, and free to compete with, each other:

1. CCM, Cab Sales, and Checker;

2. Parmelee, Yellow Taxi Co. of Minneapolis, Yellow Cab Co. of Pittsburgh, Pittsburgh Transportation Co., and National Transportation Co., Inc.;

3. Yellow and Chicago Yellow.

I. That each corporate defendant be enjoined from hereafter acquiring any interest in, or ownership of stock of, or any control over, any defendant or its subsidiaries other than one in its own group as stated in the preceding paragraph.

J. That either Chicago Yellow or Cab Sales be required to divest itself of all of its interest in and ownership of the stock of Transportation Maintenance Corporation, so that there shall be no community of interest in, or control over, said Transportation Maintenance Corporation by Chicago Yellow and Cab Sales.

K. That the plaintiff have such further, general and different relief as the nature of the case may require and the Court may deem proper in the premises.

29

George B. Haddock,
GEORGE B. HADDOCK,
Melville C. Williams,
MELVILLE C. WILLIAMS,
Special Assistants to the Attorney General,
Leonard M. Bessman,
LEONARD M. BESSMAN,
Donald G. Balthis,
DONALD G. BALTHIS,
James E. Mann,
JAMES E. MANN,
Joseph A. Prindaville,
JOSEPH A. PRINDAVILLE,
Special Attorneys,
Suite 820, 208 South La Salle Street,
Chicago 4, Illinois.

Tom C. Clark,
TOM C. CLARK,
Attorney General.
Wendell Berge,
WENDELL BERGE,
Assistant Attorney General.
Holmes Baldridge,
HOLMES BALDRIDGE,
Special Assistant to the Attorney General.
J. Albert Woll,
J. ALBERT WOLL,
United States Attorney.

30 In the District Court of the United States

[Title omitted.]

Motion of defendants, Yellow Cab Company; Chicago Yellow Cab Company, Inc.; Parmelee Transportation Company; Cab Sales and Parts Corporation; Checker Taxi Company; Checker Cab Manufacturing Corporation, and Morris Markin, to dismiss the complaint for failure to state a claim

Filed Sept. 16, 1946

The above-named defendants, moving on one set of motion papers for the convenience of the Court and reserving the right of each moving defendant to be heard through its own counsel on

these motions, hereby do separately and severally move the court pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure for judgment dismissing the complaint for failure to state a claim against the defendants upon which relief can be granted by this Court. In the alternative, they do further move for partial judgment pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure, dismissing from the complaint for failure to state a claim against the defendants upon which relief can be granted by this Court, the following portions of said complaint.

1. All of paragraphs 4, 5, 6, 19 (except subparagraphs (a) and (b)), 20–52, 53 (except subparagraph (3)), and the Prayer (except Paragraph A).

31 2. The words "and in the business of furnishing cab services for hire in the City of Chicago, Illinois, and its vicinity" in paragraph 18.

3. The words "the operation and" in paragraph 19 (a), and the words "and use as cabs" and the words "for such use, or use" in paragraph 19 (b).

Kirkland, Fleming, Green, Martin and Ellis,
KIRKLAND, FLEMING, GREEN, MARTIN AND ELLIS,
Attorneys for Defendants,
Yellow Cab Company and Chicago Yellow Cab Company, Inc.

Kaufman, Gallop, Climenko, Gould and Lynton,
KAUFMAN, GALLOP, CLIMENKO, GOULD AND LYNTON,
Attorneys for Defendants,
Checker Cab Manufacturing Corporation and Morris Markin.

Winston, Strawn and Shaw,
WINSTON, STRAWN AND SHAW,
Attorneys for Defendants,
Checker Cab Manufacturing Corporation and Morris Markin.

Jesmer and Jesmer,
JESMER AND JESMER,
Attorneys for Defendants,
Checker Taxi Company and Cab Sales and Parts Corporation.

Ringer, Reinwald & Sostrin,
RINGER, REINWALD & SOSTRIN,
Attorneys for Defendant,
Parmelee Transportation Company.

Received a copy of the foregoing motion and brief and appendices of defendants in support thereof this 16th day of September 1946.

(S) MELVILLE C. WILLIAMS,
Attorney for Plaintiff.

32 In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF

v.

YELLOW CAB COMPANY, ET AL., DEFENDANTS

Memorandum

Filed Nov. 16, 1946

This is an action by the government under Section 4 of the Sherman Act (15 U. S. C. A. Sec. 4) seeking relief against an alleged conspiracy and combination to restrain and to monopolize trade in violation of sections 1 and 2 of that Act. Defendants have filed motions to dismiss the complaint under Rule 12 (b) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

The action is brought against six corporations and one individual. Checker Cab Manufacturing Corporation manufactures motor vehicles in Michigan for use as cabs. Its president is Morris Markin, a resident of Michigan. The Manufacturing Corporation and Markin will both be referred to hereinafter as "CCM." Chicago Yellow Cab Company, Inc., owns all of the capital stock of Yellow Cab Company, which operates "Yellow" taxicabs in Chicago. Checker Taxi Company holds taxicab licenses issued by the City of Chicago and leases such licenses to Cab Sales and Parts Corporation which operates "Checker" taxicabs in Chicago. Yellow Cab Company, Checker Taxi Company and Cab Sales and Parts will hereinafter be referred to as "the taxicab operating companies." Parmelee Transportation Company operates vehicles in Chicago to transport passengers and their luggage from one railroad station to another pursuant to contracts with railroads and railroad terminal associations.

33 The complaint contains many allegations designed to show that CCM under contracts, understandings and stock acquisitions has such control of the taxicab operating companies and Parmalee that the latter are required to purchase their vehicles from CCM. No end is served by here summarizing these allegations. The court assumes for the purpose of the motion before us that CCM so controls the taxicab operating companies and Parmelee.

Although containing only one count the complaint actually charges two conspiracies. It charges, first, that the defendants

have conspired to restrain commerce in the transportation by taxicabs of railroad passengers between, to and from railroad stations located in the city of Chicago. It charges, second, a conspiracy to restrain interstate trade in the sale of motor vehicles for use as cabs.

The scope of the first of these charges is all-important. The legality or illegality of any restrains alleged in the complaint must be tested solely by their effect on the transportation by taxicabs of railroad passengers coming to or leaving Chicago. The government does not claim that any such restraints affect the business of railroads or the transportation of railroad passengers except to the extent stated. The basic question on this charge is, therefore, whether the operating companies, to the extent that they transport by taxicabs interstate railroad passengers between, to and from railroad stations, are engaged in interstate commerce.

This is not the first time this issue has been presented to a court for determination. The United States Supreme Court in New York ex rel. Pennsylvania R. R. Co. v. Knight (1904), 192 U. S. 21, held that identical taxicab services were not interstate commerce but an independent local service preliminary or subsequent to interstate transportation. The Supreme Court has frequently referred to that decision and in each instance has treated it as correct. Swift and Company v. United States (1905), 196 U. S. 375, 401; Stafford v. Wallace (1922), 258 U. S. 495, 528. And, this court is of the opinion that the decision in the Knight case is predicated on sound legal principles.

34 The Knight case is not disposed of by the fact, as urged by the government, that the court might have based its decision on other grounds. Nor do the many decisions under acts such as the National Labor Relations Act and the Fair Labor Standards Act, relied on by the government, weaken its force. These acts extended federal control over a wide area of intrastate activity which affects interstate commerce. Here, however, the question is whether defendants' taxicab operations are interstate commerce. But even under these acts the one case involving taxicab operations held them to be intrastate. Ridley v. General Cab Company, CCH 6 Labor Cases, 61, 374. Also, in the Knight case the court made the following statement:

"As we have seen, the cab service is rendered wholly within the State and has no contractual or necessary relation to interstate transportation. It is either preliminary or subsequent thereto. It is independently contracted for, and not necessarily connected therewith."

To prove interstate character, the government points to the fact that defendants' taxicabs render services to interstate railroad pas-

sengers. The mere rendering of local services to an interstate passenger cannot transform an intrastate business into an interstate enterprise. To so hold would obviously result in obliterating the historical and sound distinction between the two types of commerce. The government urges as an important element the fact that railroad stations in Chicago are designed to facilitate the use of taxicabs for the convenience of the interstate railroad passengers. But many railroad stations are also designed to afford easy access to other local services for the convenience of passengers. Thus, in Chicago at least two of the largest stations are specially designed to provide its passengers with easy means of access to the elevated lines. A number of railroad depots also provide accommodations for private automobiles. Stations in other cities are specially designed to furnish railroad passengers with access to large hotels. Can it be logically urged that because of these arrangements for the convenience of the passengers, the elevated lines or such hotels are engaged in interstate commerce. As was stated in the Knight case:

35 "** * * many things have more or less close relation to interstate commerce, which are not properly to be regarded as a part of it. If the cab which carries the passengers from the hotel to the ferry landing is engaged in interstate transportation, why is not the porter who carries the traveler's trunk from his room to the carriage so engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply the hay and grain for horses also engaged in interstate commerce? And where will the limit be placed?"

The following facts either appear in the complaint, are of common knowledge, or have been admitted in briefs and arguments. A railroad passenger upon his arrival in Chicago may freely choose one of several methods of local transportation whether he be going to another station or to any other point in the city. Such passenger, prior to his arrival, makes no arrangement with any railroad or with anyone else for the hire of a taxicab in Chicago. If, upon arrival, he determines to take a taxicab he makes arrangements for carriage with the taxicab driver and is transported to another point in Chicago or its vicinity. The defendants' taxicabs do not cross state lines. The railroad passenger has control of the taxicab both as to contents, direction and time of use. He pays his taxicab fare to the taxicab driver at a rate fixed by the City of Chicago and the railroads have no control or interest in that fare. The carriage of a railroad passenger by any particular taxicab is casual and incidental and the number of taxicab trips in which interstate railroad passengers are transported is a small part of the total number of taxicab trips in Chicago. Finally, no corporate

contractual or other relationship in the nature of integration exists between the railroads and the taxicab companies.

No one of the foregoing elements, of course, is determinative. But as the Supreme Court has held, the determination of whether particular commerce is interstate or intrastate is a "practical" matter "drawn from the course of business". Swift and Company v. United States, supra. Considering the entire course of business of the taxicab companies, the court concludes that such business, as held in the Knight case, is an independent local service preliminary or subsequent to any interstate transportation. In the
36 court's judgment, therefore, the complaint fails to state a claim under the Sherman Act insofar as the transportation of interstate railroad passengers is concerned.

In addition the court is of the opinion that the complaint fails to set forth such facts as are necessary to show that the defendants conspired to or did restrain trade. The existence and legality of that restraint must be determined with respect to the transportation by taxicabs of interstate railroad passengers between, to and from railroad stations in Chicago. The complaint contains no allegations showing a conspiracy directed to, or in restraint of, that commerce. There is no allegation that defendants agreed upon the rates to be charged for the transportation of interstate railroad passengers. There is no allegation that insufficient taxicabs are furnished for the transportation of such railroad passengers. There is no allegation that defendants have otherwise restrained such commerce. The complaint instead proceeds on the theory that defendants conspired to restrain generally the business of furnishing cab services for hire in the City of Chicago and leaves to assumption and inference the effect upon one small segment, of that general business—the transportation of interstate railroad passengers. Such vital elements in the statement of a claim cannot be left to inference and speculation.

The complaint also alleges defendants have conspired to restrain and monopolize interstate trade in the sale of motor vehicles for use as cabs. The complaint proceeds on the theory that CCM has a monopoly of the sale of taxicabs in Chicago alone because the taxicab operating companies held about 80% of the taxicab licenses issued by the City. The complaint does mention three other cities, New York, Minneapolis and Pittsburgh. There patently exists no monopoly in the first two cities in which CCM subsidiaries operate 2,000 of the 13,000 and 125 of the 214 taxicabs respectively. The allegations with respect to conditions in Pittsburgh are too vague to determine the situation in that city. But the complaint does not charge that CCM has a monopoly in the manufacture of taxicabs or a monopoly in the general sense of the sale of taxicabs. It is a matter of common knowledge that the

37 large automobile manufacturers produce and sell the great majority of vehicles used as taxicabs.

The State of Illinois has by statute delegated to the City of Chicago (Cities and Villages Act, Smith-Hurd Ill. Ann. Stats., Ch. 24, Secs. 23–28, 10, 27, 51, 78) power to regulate the taxicab industry in Chicago. The City of Chicago has in turn enacted a series of ordinances governing the licensing and operation of taxicabs in Chicago. (Ordinances of September 25, 1929; May 18, 1934; December 22, 1937; June 26, 1945.)

The court is of the opinion that the charge does not state a claim under these facts. Such restraint as exists in this case necessarily results from the acquisition by CCM of the control of two outlets for purchase of CCM's product. The nature of the restraint is that the outlets are thereby prevented from buying vehicles from manufacturers other than CCM or conversely that manufacturers other than CCM are prevented from selling vehicles to the outlets. Restraints of this nature are not frowned upon by the law. They are common and are inherent in the acquisition by a manufacturing company of outlets regardless of whether the manufacturer creates the outlets or acquires them by purchase or under exclusive agency arrangement. Exclusive dealing arrangements of this nature are normal, usual and customary business practices and their legality under the Sherman Act has long been recognized. United States v. Winslow (1913), 227 U. S. 202; United States v. United States Steel Corp. (1920), 251 U. S. 417; Black and White Taxicab and Transfer Company v. Brown and Yellow Taxicab and Transfer Company (1928), 276 U. S. 518; United States v. Paramount Pictures (1946), 66 F. Supp. 323.

The effect of the restraint on interstate commerce is plainly inconsequential. It consists solely of sales of one product by one comparatively small manufacturer to two companies which have about 80% of one type of business in one city in the United States. It consists of sales of 2,500 taxicabs out of many thousand sold in interstate commerce. Such effect is clearly too unsubstantial
38 to meet the test laid down for a violation of the Sherman Act. Apex Hosiery Co. v. Leader (1939), 310 U. S. 469; United Mine Workers of America v. Coronado Coal Company (1922), 259 U. S. 344; Glenn Coal Company v. Dickinson Fuel Company (C. C. A. 4, 1934), 72 F. (2d) 885.

The court, therefore, finds nothing illicit in the nature of the restraint resulting from CCM's acquisition of control of the taxicab operating companies.

The charge must fail, however, for a more decisive reason. If illegality attaches to CCM's acquisition of the taxicab operating companies such illegality must lie in the fact that the operating companies hold 80% of the licenses issued by the city. It is appar-

ent from the relief prayed in the complaint that this suit would not have been filed had CCM controlled only one operating company or had both operating companies held less than a majority of the licenses issued by the city. It is obviously indispensable to the theory of the complaint that the taxicab operating companies hold the great preponderance of licenses issued by the city. The government's theory therefore resolves itself into an attack on the validity of the city's taxicab ordinances or on the validity of the city's issuance of licenses to the taxicab operating companies.

The Sherman Act contains no authority for such an attack on the city's power or exercise of such power. The courts have uniformly held that the licensing and regulation of the taxicab industry is a subject for exercise solely by a municipality under its police power. This court and the courts of Illinois have held Chicago's taxicab ordinances a valid exercise by the city of its police power and they have held that the issuance by the city of a majority of the taxicab licenses to the defendant operating companies in this case does not create a monopoly. Capitol Taxicab Co. v. Cermak (C. C. A. 7, 1932), 60 F. (2d) 608; People v. Thompson (1930), 341 Ill. 166; Chicago v. Dorband (1938), 297 Ill. App. 617; Chicago v. Eagle Taxi Co. (1933), 273 Ill. App. 614; Yellow Cab Company v. City of Chicago, Circuit Court of Cook County, No. 46 C 943, unreported, 1946. In Rudack v. Valentine (Spec. Term, N. Y. 39 County, 1937), 163 Misc. 326, 295 N. Y. S 976, aff'd (1937) 274 N. Y. 615, 10 N. E. (2d) 577, the court held that the licensing and regulation of the taxicab industry is a valid exercise of a municipality's police power. The court pointed out that in substantially all cities the taxicab industry is treated as a public utility under local regulations.

It is not for the court to determine whether the city has acted wisely or unwisely in issuing the majority of its licenses to one interest or to two corporations owned or controlled by the same interest. It is a question rather for the determination of the city in the public interest of its citizens. The Sherman Act, as the Supreme Court has held, does not include within its reach such restraints as necessarily flow from the regulation of local problems by local governmental bodies. Parker v. Brown (1943), 317 U. S. 341; Field v. Barber Asphalt Paving Company (1904), 194 U. S. 618.

With respect to Parmelee, the complaint makes two claims. First, it is alleged that Parmelee will not compete with the taxicab operating companies for the latter's business. This claim must refer to the taxicab companies' business other than the transportation of interstate railroad passengers. Since this remaining business is concededly intrastate business no basis exists for holding this claim within the reach of the Sherman Act. Second, it is alleged

that the taxicab operating companies will not attempt to compete with Parmelee for contracts with railroads or railroad terminal associations for the transportation of railroad passengers and their luggage. Having in mind a commonly known fact that the taxicab business is totally different from Parmelee's both from a standpoint of equipment used and services rendered, the court is of the opinion the allegations referred to are insufficient to charge a conspiracy to restrain trade in this respect. Further, the court is unfamiliar with any principle of law that requires a corporation in an integrated enterprise to compete with an affiliated corporation.

For the reasons indicated defendants' motion to dismiss should be sustained.

Walter J. La Buy.
WALTER J. LA BUY,
Judge, United States District Court.

40 In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action No. 46C 1339

UNITED STATES OF AMERICA, PLAINTIFF

v.

YELLOW CAB COMPANY, ET AL., DEFENDANTS

Order of dismissal

Dec. 2, 1946

This cause coming on to be heard on defendants' motions to dismiss the complaint for failure to state a claim upon which relief can be granted, the Court having heard oral argument, having considered the briefs submitted in support of the motions and in opposition thereto, and having found that the complaint does not state a claim upon which relief can be granted,

It is hereby ordered, adjudged, and decreed that defendants' motions to dismiss the complaint for failure to state a claim be and they are hereby granted: and

It is hereby further ordered, adjudged, and decreed that this action be, and it hereby is, dismissed.

December 2nd, 1946.

Walter J. La Buy,
WALTER J. LA BUY,
District Judge.

Agreed to as to form this 29th day of November 1946.

John C. Herberg,
JOHN C. HERBERG,
Special Assistant to the Attorney-General.

41 In the District Court of the United States

[Title omitted.]

Petition for appeal

Filed Jan. 27, 1947

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final judgment of this Court entered on the second day of December 1946, does hereby pray an appeal from said final judgment to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the judgment erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that this appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said final judgment was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

(S) WENDELL BERGE,
Assistant Attorney General.
(S) MELVILLE C. WILLIAMS,
Special Assistant to the Attorney General.

Dated this 27th day of January 1947.

51 In the District Court of the United States

[Title omitted.]

Assignment of errors and prayer for reversal

Filed Jan. 27, 1947

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of the final decree in the district court on December 2, 1946, in the above-entitled cause, and says that in the entry of the final decree the district court committed error to the prejudice of the plaintiff in the following particulars:

1. The court erred in holding that the complaint charges two conspiracies.

2. The court erred in holding that the complaint does not set forth a conspiracy illegally to restrain and to monopolize interstate commerce in taxicabs.

3. The court erred in holding that the allegations of the complaint respecting defendants' control over all companies operating taxicabs in Pittsburgh and over interstate sales of taxicabs to such companies "are too vague to determine the situation" in Pittsburgh.

4. The court erred in holding that, upon the allegations of the complaint, the interstate commerce in taxicabs restrained or monopolized by defendants was too unsubstantial to constitute a violation of the Sherman Act.

52 5. The court erred in holding that defendant's conspiracy to bring under common control the principal companies operating taxicabs in several leading cities, with the effect and purpose of excluding all manufacturers of taxicabs other than CCM from the business of selling taxicabs to such companies in interstate commerce, did not violate Sections 1 and 2 of the Sherman Act.

6. The court erred in holding that the transportation by cab of railroad passengers between, to, and from railroad stations in Chicago is not interstate commerce.

7. The court erred in failing to hold that the charge in the complaint that Yellow and Checker, pursuant to defendants' conspiracy, agreed not to compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers between railroad stations in Chicago, sets forth an illegal restraint and illegal monopolization of interstate commerce.

8. The court erred in holding that the charges made in the complaint constitute an attack upon the validity of the taxicab ordinances of the city of Chicago.

9. The court erred in holding that the conspiracy charged in the complaint, insofar as it relates to cab operations in the city of Chicago, is beyond the reach of the Sherman Act under the holding in Parker v. Brown, 317 U. S. 341.

10. The court erred in failing to hold that the allegations of the complaint, showing that defendants conspired to exclude from the business of carrying passengers between, to, and from railroad stations in Chicago all persons other than the holders of outstanding taxicab licenses issued by the city of Chicago, set forth a conspiracy in illegal restraint and illegal monopolization of interstate commerce.

11. The court erred in granting defendants' motions to dismiss the complaint for failure to state a claim upon which relief can be granted.

12. The court erred in dismissing the complaint.

53 Wherefore, plaintiff prays that the final decree of the district court may be reversed to the extent that it is inconsistent with the errors herein assigned by the plaintiff, and for such other and fit relief as the court may deem just and proper.

(S) WENDELL BERGE,
Assistant Attorney General.

(S) MELVILLE C. WILLIAMS,
Special Assistant to the Attorney General.

Dated this 27th day of January 1947.

54 In the District Court of the United States

[Title omitted.]

Order allowing appeal

Jan. 27, 1947

In the above-entitled cause the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final judgment of this Court in this cause entered on the 2d day of December, 1946, and having also made and filed its petition for appeal, assignment of errors and prayer for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided.

It is therefore ordered and adjudged that the appeal be and the same is hereby allowed as prayed for.

(S) WALTER J. LA BUY,
United States District Judge.

Dated this 27th day of January 1947.

55 [Citation in usual form, filed Jan. 27, 1947, omitted in printing.]

57 In the District Court of the United States

[Title omitted.]

Praecipe for transcript of record

Filed January 27, 1947

To The Clerk, United States District Court, Northern District of Illinois, Eastern Division.

The appellant hereby directs that, in preparing the transcript of the record in the above entitled cause for its appeal to the Supreme Court of the United States, you include the following:

1. Docket entries showing filing of the pleadings and papers hereinafter set forth, and the entry of the orders hereinafter specified.
2. Complaint.
3. Motion of defendants to dismiss complaint.
4. Order granting defendants' motion to dismiss complaint, entered December 2, 1946.
5. Opinion of Honorable Walter J. La Buy filed November 16, 1946, as amended by order filed November 22, 1946.
6. Petition for appeal.
7. Assignment of errors and prayer for reversal.
8. Statement as to jurisdiction.
9. Order allowing appeal.
10. Citation.
11. Statement calling attention to the provisions of Supreme Court Rule 12 (3).
12. Praecipe for transcript of record.

58 13. Proof of service of:

a. Petition for appeal;
b. Order allowing appeal;
c. Assignment of errors and prayer for reversal;
d. Statement as to jurisdiction;
e. Citation;
f. Statement calling attention to the provisions of Supreme Court Rule 12 (3);
g. Praecipe for transcript of record.

(S) MELVILLE C. WILLIAMS,
Special Assistant to the Attorney General.

In United States District Court

Judge La Buy Calendar—46C1339

Title of case: United States of America vs. Yellow Cab Company; Chicago Yellow Cab Company, Inc.; Parmelee Transportation Company; Cab Sales and Parts Corporation; Checker Taxi Company; Checker Cab Manufacturing Corporation; and Morris Markin.

ATTORNEYS

For Plaintiff:

George B. Haddock, Special Assistant to the Attorney General, Suite 820, 208 S. LaSalle St., Chicago 4, Illinois.

For Defendants:

Jesmer and Jesmer, 100 N. LaSalle St.; Weymouth Kirkland, Howard Ellis, A. L. Hodson and John F. Floberg, 33 N. LaSalle

St.; Winston, Strawn and Shaw, First National Bank Bldg.; see att. sheet for Attys.

86 Receipts, remarks, etc.: "Sherman Antitrust Suit."

Date	Filings—Proceedings	Clerk's fees	
		Plaintiff	Defendant
7-25-46	Filed Complaint and 7 copies (JS5)	$15.00	U. S.
7-25-46	Issued 5 Summons and 5 copies, with copy of complaint attached to each Summons, to the U. S. Marshal, Chicago, for the following defendants: Yellow Cab Co., Chicago Yellow Cab Co., Inc., Parmelee Transportation Co., Cab Sales & Parts Corp. and Checker Taxi Co. (R. W.).		
7-25-46	Filed Motion of Pltf.		
7-25-46	Enter order for the issuance of summons to nonresident Defts. Draft—La Buy, J.		
7-25-46	Issued and mailed 2 Summons and 2 copies, with copy of Complt. attached to each Summons, to the U. S. Marshal at Grand Rapids, Mich., re Checker Cab Mfg. Co., Kalamazoo, Mich., and Morris Markin, c/o Checker Cab Mfg. Corp., Kalamazoo, Michigan. Mailed notice to Pltf.'s attorney of order entered 7/25/46.		
7-26-46	Mailed certified copy of Complaint filed 7/25/46 to Anti-Trust Div. (W).	2.60	U. S.
7-31-46	Filed Summons returned served on Parmelee Transportation Co	2.00	
7-31-46	Filed Summons returned served on Checker Taxi Co. (1 Ser.)	2.00	
7-31-46	Filed Summons returned served on Cab Sales and Parts Corp. (1 Ser.) (W).	2.00	
7-31-46	Filed Appearance of Jesmer and Jesmer, attorneys (W)		
8- 1-46	Filed Appearance of Yellow Cab Co., et al. and their attorneys (W).		
8- 5-46 87	Filed Appearances of Checker Cab Mfg. Corp. and Morris Markin, defendants, and attorneys Winston, Strawn and Shaw.		
8- 5-46	Filed Summons returned served on Checker Mfg. Corp. (Fee)	4.94	
8- 5-46 87	Filed Summons returned served on Morris Markin (Fee)	2.00	B.
8-12-46	Filed Appearance of Parmelee Transportation Co. and its attorneys, Ringer, Reinwald & Sostrin (R. W.).		
8-13-46	Filed Stipulation.		
8-13-46	Defendants' time to answer or otherwise plead is extended to Sept. 16, 1946. Draft—Igoe, J. (R. W.). Mailed notice to attorneys on 8/14/46 (R. W.).		
8-16-46	Filed Summons returned served—1 Service on Yellow Cab Co.		2.00 D
8-16-46	Filed Summons returned served on Chicago Yellow Cab Co. (1 Service).		2.18 D
9-16-46	Filed Motion of certain defendants to dismiss Complaint.		
9-16-46	Filed Brief for defendants in support of motion to dismiss, etc.		
9-16-46	Filed Appendices to Brief for defendants, etc. (W).		
9-24-46	Filed Stipulation.		
9-24-46	By stipulation time for plaintiff to file answering brief to defendant's motion to dimiss extended to October 1, 1946—Draft—La Buy, J. Mailed notice to attorneys 9-25-46 (mk).		
10/2/46	Filed Proof of Service of Brief (mk).		
10- 9-46	Arguments on motion to dismiss set for Oct 18, 1946 at 10:15 a. m. La Buy, J. Mailed notice to attorneys 10-10-46 (mk).		
10-18-46	On motion of A. L. Hodson leave given Samuel H. Kaufman and Harold S. Lynton, members of the New York Bar, to participate in this hearing on behalf of defendants. Arguments heard and concluded on motion to dismiss the complaint, and said motion taken under advisement.—La Buy, J. Mailed Notice to Attorneys 10/22/46 (W)		
11-16-46	Filed Memorandum of Judge La Buy (W).		
11-19-46	Filed Transcript of proceeding before Hon. W. J. La Buy, J. of 10-18-46 (mk).		
11-22-46 88.	Enter order amending on its face, memorandum of Judge La Buy filed on Nov. 16, 1946 by inserting the word "taxicabs" after the word "yellow" on line 15 of page 1, by substituting the word "intrastate" for the word "interstate" at the end of line 6 and the beginning of line 7 on page 3, by substituting the word "requires" for the word "prohibits" on line 33 of page 8, and by substituting the words "to compete" for the words "from competing" on line 34, page 8—La Buy, J. Mailed Notice to Attorneys 11/25/46 (w).		

Date	Filings—Proceedings	Clerk's fees	
		Plaintiff	Defendant
12- 2-46	Enter Order granting defendants' motions to dismiss complaint —Draft—La Buy. J. (J86). Mailed notice to attorneys 12-3-46 (mk).		
12- 4-46	Issued Certified copy of Order of Dismissal (mk)	$10	U. S.
1-27-47	Filed Petition for Appeal by plaintiff and Statement as to Jurisdiction.	5.00	U. S.
1-27-47	Filed Assignment of Errors and Prayer for Reversal.		
1-27-47	Filed Praecipe for Transcript of Record.		
1-27-47	Filed Proof of Service.		
1-27-47	Filed Statement calling attention to Supreme Court Rule 12 (3).		
1-27-47	Enter order allowing appeal—Draft—Enter order of citation—Draft—La Buy, J. Mailed Notice to Attorneys 1/28/47 (w). Filed Citation.		
2-11-47	Filed 2 Motions to Dismiss or Affirm (w).		

89 [Clerk's certificate to foregoing transcript omitted in printing.]

90 In the Supreme Court of the United States

October Term, 1946

No. 1035

Statement of points to be relied upon and designation of parts of the record necessary for consideration thereof

Filed March 19, 1947

1. Now comes the Appellant in the above cause and for its statement of points upon which it intends to rely in its appeal in this Court adopts the points contained in its Assignment of Errors heretofore filed herein.

2. The entire record in this cause as filed in this Court pursuant to the appellant's praecipe to the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, is necessary for the consideration of the foregoing points and Appellant designates said entire record for printing by the Clerk of this Court.

GEORGE T. WASHINGTON,
Acting Solicitor General.

Dated March 18, 1947.

91 I hereby certify that I have this day served a copy of the foregoing Statement of Points to be Relied Upon and Designation of Parts of the Record Necessary for Consideration thereof on counsel for the Appellees by mailing a copy to each of the following: Kirkland, Fleming, Green, Martin & Ellis, 33 North

LaSalle Street, Chicago, Illinois, Counsel for Yellow Cab Company and Chicago Yellow Cab Company. Samuel Kaufman, 30 Broad Street, New York (4), N. Y., and Winston, Strawn & Shaw, 38 South Dearborn Street, Chicago, Illinois, Counsel for Checker Cab Mfg. Corp. and Morris Markin. Jesmer & Jesmer, 100 North LaSalle Street, Chicago, Illinois, Counsel for Checker Taxi Company and Cab Sales & Parts Corporation. Ringer, Reinwald & Sostrin, 160 North LaSalle Street, Chicago, Illinois, Counsel for Parmelee Transp. Co.

George T. Washington
GEORGE T. WASHINGTON,
Acting Solicitor General.

MARCH [illegible]7.

94 Supreme Court of the United States

No. 1035, October Term, 1946

Order noting probable jurisdiction

March 17, 1947

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[Endorsement on cover:] File No. 51899. Northern Illinois D. C. U. S. Term No. 1035. The United States of America, Appellant, vs. Yellow Cab Company, Chicago Yellow Cab Company, Inc., Parmelee Transportation Company, et al. Filed February 17, 1947. Term No. 1035 O. T. 1946.

U. S. GOVERNMENT PRINTING OFFICE: 1947

FILE COPY

Supreme Court, U.S.
FILED
FEB 27 1947
CHARLES ELMORE CROPLEY
CLERK

No. 1035

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, APPELLANT

v.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action No. 46C1339

UNITED STATES OF AMERICA, PLAINTIFF

v.

YELLOW CAB COMPANY, ET AL., DEFENDANTS

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the final judgment of the district court entered in this case on December 2, 1946. A petition for appeal is presented to the district court herewith, to wit, on January 27, 1947.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this case is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823; 36 Stat. 1167; 15 U. S. C. 29), and Section 238 of the Judicial Code, as amended (36

732473—47——1

Stat. 1157; 38 Stat. 804; 43 Stat. 938; 28 U. S. C. 345).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

United States v. *Crescent Amusement Co.*, 323 U. S. 173

Interstate Circuit, Inc. v. *United States*, 306 U. S. 208

Sugar Institute, Inc. v. *United States*, 297 U. S. 553

STATUTE INVOLVED

The pertinent provisions of Sections 1, 2 and 4 of the Act of July 2, 1890, 26 Stat. 209, as amended, 15 U. S. C. secs. 1, 2 and 4, commonly known as the Sherman Act, are as follows:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, * * *.
>
> SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *.

SEC. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * *

THE ISSUES AND THE RULING BELOW

This is an equity suit brought by the United States in the federal District Court for the Northern District of Illinois against six corporations and one individual charging them with conspiring to restrain and to monopolize interstate commerce in the sale of cabs to the principal cab companies operating in Chicago, New York, Pittsburgh and Minneapolis and in furnishing cab service in Chicago, in violation of Sections 1 and 2 of the Sherman Act. The defendants are Yellow Cab Company (referred to herein as Yellow), which operates "Yellow" cabs in Chicago; Chicago Yellow Cab Company (referred to herein as Chicago Yellow), a holding company owning all the stock of Yellow; Parmelee Transportation Company (referred to herein as Parmelee), which operates cabs between railroad stations in Chicago; Cab Sales and Parts Corporation (referred to herein as Cab Sales), which operates "Checker" cabs in Chicago; Checker Taxi Company (referred to herein as Checker), which holds and leases

to Cab Sales 1,000 taxicab licenses issued by the city of Chicago; Checker Cab Manufacturing Company (referred to herein as CCM), which manufactures in Michigan taxicabs for sale in other States; and Morris Markin, president of CCM.

Upon defendants' motion to dismiss the complaint for failure to state a claim upon which relief might be granted, the district court held that the complaint failed to state a cause of action. An order dismissing the complaint was accordingly entered.

The principal allegations of the complaint may be summarized as follows:

Defendants' conspiracy began in January 1929 when Markin and others initiated a program to merge the more important cab companies operating in Chicago, New York and other cities. One of the principal purposes of this program was to insure that the cab companies brought under common control would purchase all of their cabs from CCM.

As a first step in the conspiracy, Parmelee was organized in April 1929. It was financed in part by CCM, which owns about 62% of its stock. Parmelee acquired the stock of all the companies operating taxicabs in Pittsburgh and it now operates all of the taxicabs in that city through two wholly-owned subsidiaries. It organized a company to operate taxicabs in Minneapolis and its

subsidiary now holds 58% of the cabs licensed in Minneapolis. It also acquired substantially all of the stock of a cab company operating in New York city, and of the 13,000 taxicabs which are now licensed for operation there, a subsidiary of Parmelee holds 2,000.

As to Chicago, Parmelee acquired all of the stock of The Parmelee Company, whose business was transporting passengers between railroad stations in Chicago pursuant to contracts with railroads and railroad terminal associations, and dissolved this company and took over its business. Parmelee also acquired about 30% of the stock of Chicago Yellow, an acquisition which gave Parmelee control over the management of Chicago Yellow and its subsidiary, Yellow.

Of the Chicago taxicab licenses which were outstanding in 1929, Yellow held 44% and Checker 33%. Checker was a "cooperative" company the stockholders of which were the various owners of "Checker" cabs, who had agreed that Checker should hold the record title of and the city licenses for their cabs. Checker came under the defendant's control through the medium of Cab Sales, a company which was organized in 1930 and which has at all times been managed and operated by Markin. Since 1934 he has owned all the stock of Cab Sales.

In 1930 Checker, in partial settlement of litigation with CCM, agreed that the drivers of

Checker cabs would during the next five years purchase all of their cabs from Cab Sales. CCM thereupon made Cab Sales its exclusive selling agent for such cabs and during the five years of the agreement Cab Sales sold these cabs to drivers at about $400 per cab above the price at which Cab Sales purchased them from CCM. In 1931 Cab Sales borrowed $500,000 from Yellow to finance the acquisition of a majority of the stock of Checker and Cab sales subsequently acquired over 97% of this stock. As cab owners defaulted from time to time on their payments for cabs purchased from Cab Sales, it took over the ownership and operation of the cabs. Since 1941 it has owned and operated all of the cabs for which Checker holds taxicab licenses. These licenses Checker leases to Cab Sales.

Markin, who had a substantial interest in the third largest company operating taxicabs in Chicago, sold his stock in the company to Parmelee in 1930. In 1932 Cab Sales acquired a substantial interest in the company and caused it to suspend operations and caused its drivers to enter into contracts with Checkers.

As a part of their conspiracy, the defendants agreed that all companies operating taxicabs which should be brought under common control should, in their purchases of new cabs, buy exclusively cabs manufactured by CCM. The de-

fendants similarly agreed that Yellow and Cab Sales should not compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers and their luggage between railroad stations in Chicago. They likewise agreed that Parmelee should not compete with Yellow or Cab Sales in the business of transporting passengers in Chicago and vicinity except by contract with railroads and railroad terminal associations.

In 1929 there were about 5,300 taxicabs licenses outstanding in Chicago. In that year the city adopted an ordinance providing that no additional licenses would be issued except upon a finding of public convenience and necessity. In 1934 further restrictions on issuance of new taxicab licenses were enacted. By 1937 the number of outstanding licenses had declined to 4,071, of which Yellow had 53% and Checker 37%. In that year Yellow and Checker agreed to operate a smaller number of cabs than those for which they held licenses and they took out of operation over 15% of their cabs. They also agreed to induce the City of Chicago to reduce the number of its taxicab licenses to 3,000, of which Yellow would hold 1,500 and Checker 1,000. In December 1937 the city enacted an ordinance providing that if licensees would surrender sufficient licenses to reduce the number to 3,000, no additional licenses (except by way

of renewal or replacement) would be issued and that if a future ordinance should increase the number of licenses, the licensees who had surrendered licenses would have prior right to the additional licenses up to the number surrendered. Yellow, Cab Sales and Checker thereupon entered into a contract under which Checker surrendered 500 licenses and Yellow 571, thereby bringing the number of city taxicab licenses down to 3,000.

In 1945 a large number of veterans applied to the City of Chicago for taxicab licenses. The city then sought to issue additional licenses to them but it was held in a suit against the city brought by Yellow and Checker that their acceptance of the 1937 ordinance constituted a binding contract between them and the city and that the city was precluded from issuing additional licenses until it had replaced those surrendered by Yellow and Checker in 1938.

The district court, considering first the allegations of the complaint relating to transportation by cab of railroad passengers between, to and from railroad stations in Chicago, held that *Pennsylvania Railroad Co. v. Knight*, 192 U. S. 21, established that such transportation is an independent local service preliminary or subsequent to any interstate transportation and that it is not interstate commerce. The court also held that no illegal restraint of such transportation was set

forth since there was no allegation that the defendants had agreed upon the rates to be charged for transporting interstate railroad passengers or that they had furnished insufficient taxicabs for such transportation.

Concerning the allegations relating to restraint and monopolization of interstate sales of taxicabs, the court below believed that only the situation in Chicago required consideration. It said that no "monopoly" in New York or Minneapolis was shown and that the allegations respecting Pittsburgh were "too vague." As to Chicago, the court held the allegations insufficient upon the ground that exclusive dealing agreements for the purchase and sale of goods are a normal business practice which the courts have recognized as not offending against the Sherman Act. The court also held that since only 2,500 cabs out of the many thousand sold in interstate commerce were shown to be restrained or monopolized, the effect on commerce was too unsubstantial to be a violation of the Act.

The court likewise viewed the complaint as necessarily involving an attack upon the validity of the taxicab ordinances of the city of Chicago and it held that the Sherman Act does not authorize such an attack, that *Parker* v. *Brown*, 317 U. S. 341, establishes that the Sherman Act does not embrace a restraint or monopolization flowing from exercise of state or municipal regulatory authority.

THE QUESTIONS ARE SUBSTANTIAL

The complaint in this case describes a conspiracy with two related objectives, (1) acquisition of control over the principal companies operating taxicabs in certain leading cities and (2) engrossment by CCM of the business of selling taxicabs to the companies brought under defendants' control. The court below held that in neither aspect of the conspiracy was a violation of the Sherman Act set forth. The Government's appeal challenges each of these conclusions and we submit that the challenge to each presents questions of law of substance.

It stands presently admitted that the defendants, pursuant to conspiracy, brought under common control companies having 83% of the taxicabs operated in Chicago, 100% of those operated in Pittsburgh, 58% of those operated in Minneapolis and 15% of those in New York City, and that defendants' acquisition of control over these companies had the purpose and effect of excluding all manufacturers of cabs other than CCM from the business of selling cabs to the controlled compa ..es. If, without any acquisition of control, these companies had agreed with each other and with CCM to purchase exclusively from the latter, this would clearly violate the Sherman Act.[1] The

[1] *Montague & Co.* v. *Lowry*, 193 U. S. 38; *Eastern States Lumber Dealers Assn.* v. *United States*, 234 U. S. 600; *Fashion Originators' Guild, Inc.* v. *United States*, 312 U. S. 457, 465; *Associated Press* v. *United States*, 326 U. S. 1, 18–19.

fact that in the instant case engrossment of the business was effectuated by prior purchase of stock control does not, we submit, give sanction to the combination. What violates the Sherman Act depends upon the actual restraint or monopolization effected, not the form which the transaction takes, and the tests are the same whether the restraint or monopolization results from agreement between independent units or from the integration of independent units under common ownership. *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 360, 376–377.

In *United States* v. *Bausch & Lomb Co.*, 321 U. S. 707, 719, this Court was equally divided on the question whether an agreement to purchase a particular product exclusively from one manufacturer in return for its agreement to make the product exclusively for this customer violates the Sherman Act. A question of law on which there has recently been a four to four division among the Justices of this Court is clearly substantial. We also submit that the instant case more clearly falls within the prohibitions of the Sherman Act than did the exclusive dealing agreement which was before the Court in the *Bausch & Lomb* case.

The court below, in passing upon the question whether the allegations regarding cab operations in Chicago show a violation of the Sherman Act, ignored the charge of the complaint that it was a

part of defendants' conspiracy that Yellow and Checker would not compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers between railroad stations in Chicago. We submit that the regular, day-to-day transportation between railroad stations in Chicago of passengers making interstate journeys is interstate commerce. And if the commerce is interstate, the restraint and monopolization resulting from agreement not to compete for the business does not differ in character from other agreements not to compete held to be unlawful under the Sherman Act, such as an agreement to bid collusively on contracts calling for the sale and shipment of goods in interstate commerce (*Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211). This branch of the appeal from the district court's adverse decision therefore presents substantial questions of law.

We submit, in addition, that the transportation of passengers between, to or from railroad stations in Chicago is interstate commerce (see *United States* v. *Capital Transit Co.*, 325 U. S. 357, 363). The defendants' conspiracy is therefore illegal because it excludes newcomers from this commerce (see cases cited in note 1, p. 7, *supra*). While the exclusion of newcomers from this commerce shown by the allegations of the complaint is the immediate product of restrictions

on issuance of additional taxicab licenses adopted by the city of Chicago, the agreement between defendants to surrender licenses was not authorized by ordinance. Since defendants' conspiracy was thus not confined to action authorized by a State or its municipality, it is not beyond the reach of the Sherman Act under the principles announced in *Parker* v. *Brown*, 317 U. S. 341. The appeal also presents the question whether the doctrine of that case applies where, as in the instant case, the defendants have conspired to induce a municipality to take certain regulatory action and where the defendants, in effectuation of their conspiracy, currently prevent the municipality from making any change in the restrictions imposed by prior ordinance. The questions referred to in this paragraph, and raised by the appeal, seem clearly to be of substance.

We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted.

[s] GEORGE T. WASHINGTON,
Acting Solicitor General.

JANUARY 27, 1947.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

(Civil Action No. 46 C 1339)

UNITED STATES OF AMERICA, PLAINTIFF

v.

YELLOW CAB COMPANY, ET AL., DEFENDANTS

MEMORANDUM

This is an action by the government under Section 4 of the Sherman Act (15 U. S. C. A. Sec. 4) seeking relief against an alleged conspiracy and combination to restrain and to monopolize trade in violation of sections 1 and 2 of that Act. Defendants have filed motions to dismiss the complaint under Rule 12 (b) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

The action is brought against six corporations and one individual. Checker Cab Manufacturing Corporation manufactures motor vehicles in Michigan for use as cabs. Its president is Morris Markin, a resident of Michigan. The Manufacturing Corporation and Markin will both be referred to hereinafter as "CCM". Chicago Yellow Cab Company, Inc., owns all of the capital stock of Yellow Cab Company, which operates "Yellow" taxicabs in Chicago. Checker Taxi Company holds taxicab licenses issued by the City of Chicago and leases such licenses to Cab Sales and

Parts Corporation which operates "Checker" taxicabs in Chicago. Yellow Cab Company, Checker Taxi Company and Cab Sales and Parts will hereinafter be referred to as "the taxicab operating companies." Parmelee Transportation Company operates vehicles in Chicago to transport passengers and their luggage from one railroad station to another pursuant to contracts with railroads and railroad terminal associations.

The complaint contains many allegations designed to show that CCM under contracts, understandings and stock acquisitions has such control of the taxicab operating companies and Parmelee that the latter are required to purchase their vehicles from CCM. No end is served by here summarizing these allegations. The court assumes for the purpose of the motion before us that CCM so controls the taxicab operating companies and Parmelee.

Although containing only one count the complaint actually charges two conspiracies. It charges, first, that the defendants have conspired to restrain commerce in the transportation by taxicabs of railroad passengers between, to and from railroad stations located in the City of Chicago. It charges, second, a conspiracy to restrain interstate trade in the sale of motor vehicles for use as cabs.

The scope of the first of these charges is all-important. The legality or illegality of any re-

straints alleged in the complaint must be tested solely by their effect on the transportation by taxicab of railroad passengers coming to or leaving Chicago. The government does not claim that any such restraints affect the business of railroads or the transportation of railroad passengers except to the extent stated. The basic question on this charge is, therefore, whether the operating companies, to the extent that they transport by taxicabs interstate railroad passengers between, to and from railroad stations, are engaged in interstate commerce.

This is not the first time this issue has been presented to a court for determination. The United States Supreme Court in *New York ex rel Pennsylvania RR Co.* v. *Knight*, (1904) 192 U. S. 21, held that identical taxicab services were not interstate commerce but an independent local service preliminary or subsequent to interstate transportation. The Supreme Court has frequently referred to that decision and in each instance has treated it as correct. *Swift and Company* v. *United States*, (1905) 196 U. S. 375, 401; *Stafford* v. *Wallace*, (1922) 258 U. S. 495, 528. And, this court is of the opinion that the decision in the *Knight* case is predicated on sound legal principles.

The *Knight* case is not disposed of by the fact, as urged by the government, that the court might have based its decision on other grounds. Nor

do the many decisions under acts such as the National Labor Relations Act and the Fair Labor Standards Act, relied on by the government, weaken its force. These acts extended federal control over a wide area of intrastate activity which affects interstate commerce. Here, however, the question is whether defendants' taxicab operations are interstate commerce. But even under these acts the one case involving taxicab operations held them to be intrastate. *Ridley* v. *General Cab Company*, CCH 6 Labor Cases, 61, 374. Also, in the *Knight* case the court made the following statement:

> As we have seen, the cab service is rendered wholly within the State and has no contractual or necessary relation to interstate transportation. It is either preliminary or subsequent thereto. It is independently contracted for, and not necessarily connected therewith.

To prove interstate character, the government points to the fact that defendants' taxicabs render services to interstate railroad passengers. The mere rendering of local services to an interstate passenger cannot transform an intrastate business into an interstate enterprise. To so hold would obviously result in obliterating the historical and sound distinction between the two types of commerce. The government urges as an important element the fact that railroad stations in Chicago

are designed to facilitate the use of taxicabs for the convenience of the interstate railroad passengers. But many railroad stations are also designed to afford easy access to other local services for the convenience of passengers. Thus, in Chicago at least two of the largest stations are specially designed to provide its passengers with easy means of access to the elevated lines. A number of railroad depots also provide accommodations for private automobiles. Stations in other cities are specially designed to furnish railroad passengers with access to large hotels. Can it be logically urged that because of these arrangements for the convenience of the passengers, the elevated lines or such hotels are engaged in interstate commerce. As was stated in the *Knight* case:

> * * * many things have more or less close relation to interstate commerce, which are not properly to be regarded as a part of it. If the cab which carries the passengers from the hotel to the ferry landing is engaged in interstate transportation, why is not the porter who carries the traveler's trunk from his room to the carriage so engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply the hay and grain for horses also engaged in interstate commerce? And where will the limit be placed?

The following facts either appear in the complaint, are of common knowledge, or have been admitted in briefs and arguments. A railroad

passenger upon his arrival in Chicago may freely choose one of several methods of local transportation whether he be going to another station or to any other point in the city. Such passenger, prior to his arrival, makes no arrangement with any railroad or with anyone else for the hire of a taxicab in Chicago. If, upon arrival, he determines to take a taxicab he makes arrangements for carriage with the taxicab driver and is transported to another point in Chicago or its vicinity. The defendants' taxicabs do not cross state lines. The railroad passenger has control of the taxicab both as to contents, direction and time of use. He pays his taxicab fare to the taxicab driver at a rate fixed by the City of Chicago and the railroads have no control or interest in that fare. The carriage of a railroad passenger by any particular taxicab is casual and incidental and the number of taxicab trips in which interstate railroad passengers are transported is a small part of the total number of taxicab trips in Chicago. Finally, no corporate contractual or other relationship in the nature of integration exists between the railroads and the taxicab companies.

No one of the foregoing elements, of course, is determinative. But as the Supreme Court has held, the determination of whether particular commerce is interstate or intrastate is a "practical" matter "drawn from the course of business." *Swift and Company* v. *United States, supra.*

Considering the entire course of business of the taxicab companies, the court concludes that such business, as held in the *Knight* case, is an independent local service preliminary or subsequent to any interstate transportation. In the court's judgment, therefore, the complaint fails to state a claim under the Sherman Act insofar as the transportation of interstate railroad passengers is concerned.

In addition the court is of the opinion that the complaint fails to set forth such facts as are necessary to show that the defendants conspired to or did restrain trade. The existence and legality of that restraint must be determined with respect to the transportation by taxicabs of interstate railroad passengers between, to and from railroad stations in Chicago. The complaint contains no allegations showing a conspiracy directed to, or in restraint of, that commerce. There is no allegation that defendants agreed upon the rates to be charged for the transportation of interstate railroad passengers. There is no allegation that insufficient taxicabs are furnished for the transportation of such railroad passengers. There is no allegation that defendants have otherwise restrained such commerce. The complaint instead proceeds on the theory that defendants conspired to restrain generally the business of furnishing cab service for hire in the City of Chicago and leaves to assumption and inference the effect upon

one small segment of that general business—the transportation of interstate railroad passengers. Such vital elements in the statement of a claim cannot be left to inference and speculation.

The complaint also alleges defendants have conspired to restrain and monopolize interstate trade in the sale of motor vehicles for use as cabs. The complaint proceeds on the theory that CCM has a monopoly of the sale of taxicabs in Chicago alone because the taxicab operating companies held about 80% of the taxicab licenses issued by the City. The complaint does mention three other cities, New York, Minneapolis, and Pittsburgh. There patently exists no monopoly in the first two cities in which CCM subsidiaries operate 2,000 of the 13,000 and 125 of the 214 taxicabs, respectively. The allegations with respect to conditions in Pittsburgh are too vague to determine the situation in that city. But the complaint does not charge that CCM has a monopoly in the manufacture of taxicabs or a monopoly in the general sense of the sale of taxicabs. It is a matter of common knowledge that the large automobile manufacturers produce and sell the great majority of vehicles used as taxicabs.

The State of Illinois has by statute delegated to the City of Chicago (Cities and Villages Act, Smith-Hurd Ill. Ann. Stats., Ch. 24, Secs. 23–28, 10, 27, 51, 78) power to regulate the taxicab industry in Chicago. The City of Chicago has in

turn enacted a series of ordinances governing the licensing and operation of taxicabs in Chicago. (Ordinances of September 25, 1929; May 18, 1934; December 22, 1937; June 26, 1945.)

The court is of the opinion that the charge does not state a claim under these facts. Such restraint as exists in this case necessarily results from the acquisition by CCM of the control of two outlets for purchase of CCM's product. The nature of the restraint is that the outlets are thereby prevented from buying vehicles from manufacturers other than CCM or conversely that manufacturers other than CCM are prevented from selling vehicles to the outlets. Restraints of this nature are not frowned upon by the law. They are common and are inherent in the acquisition by a manufacturing company of outlets regardless of whether the manufacturer creates the outlets or acquires them by purchase or under exclusive agency arrangement. Exclusive dealing arrangements of this nature are normal, usual and customary business practices and their legality under the Sherman Act has long been recognized. *United States* v. *Winslow,* (1913) 227 U. S. 202; *United States* v. *United States Steel Corp.,* (1920) 251 U. S. 417; *Black and White Taxicab and Transfer Company* v. *Brown and Yellow Taxicab and Transfer Company,* (1928) 276 U. S. 518; *United States* v. *Paramount Pictures,* (1946) 66 F. Supp. 323.

The effect of the restraint on interstate commerce is plainly inconsequential. It consists solely of sales of one product by one comparatively small manufacturer to two companies which have about 80% of one type of business in one city in the United States. It consists of sales of 2,500 taxicabs out of many thousands sold in interstate commerce. Such effect is clearly too unsubstantial to meet the test laid down for a violation of the Sherman Act. *Apex Hosiery Co.* v. *Leader,* (1939) 310 U. S. 469; *United Mine Workers of America* v. *Coronado Coal Company,* (1922) 259 U. S. 344; *Glenn Coal Company* v. *Dickinson Fuel Company,* (C. C. A. 4, 1934) 72 F. (2d) 885.

The court, therefore, finds nothing illicit in the nature of the restraint resulting from CCM's acquisition of control of the taxicab operating companies.

The charge must fail, however, for a more decisive reason. If illegality attaches to CCM's acquisition of the taxicab operating companies such illegality must lie in the fact that the operating companies hold 80% of the licenses issued by the city. It is apparent from the relief prayed in the complaint that this suit would not have been filed had CCM controlled only one operating company or had both operating companies held less than a majority of the licenses issued by the city. It is obviously indispensable to the theory of the com-

plaint that the taxicab operating companies hold the great preponderance of licenses issued by the city. The government's theory therefore resolves itself into an attack on the validity of the city's taxicab ordinances or on the validity of the city's issuance of licenses to the taxicab operating companies.

The Sherman Act contains no authority for such an attack on the city's power or exercise of such power. The courts have uniformly held that the licensing and regulation of the taxicab industry is a subject for exercise solely by a municipality under its police power. This court and the courts of Illinois have held Chicago's taxicab ordinances a valid exercise by the city of its police power and they have held that the issuance by the city of a majority of the taxicab licenses to the defendant operating companies in this case does not create a monopoly. *Capitol Taxicab Co.* v. *Cermak* (C. C. A. 7, 1932), 60 F. (2d) 608; *People* v. *Thompson*, (1930) 341 Ill. 166; *Chicago* v. *Dorband*, (1938) 297 Ill. App. 617; *Chicago* v. *Eagle Taxi Co.*, (1933) 273 Ill. App. 614; *Yellow Cab Company* v. *City of Chicago*, Circuit Court of Cook County, No. 46 C 943, unreported, 1946. In *Rudack* v. *Valentine*, (Spec. Term, N. Y. County, 1937) 163 Misc 326, 295 N. Y. S. 976, aff'd (1937) 274 N. Y. 615, 10 N. E. (2d) 577, the court held that the licensing and regulation of the taxicab industry is a valid exercise of a municipality's po-

lice power. The court pointed out that in substantially all cities the taxicab industry is treated as a public utility under local regulations.

It is not for the court to determine whether the city has acted wisely or unwisely in issuing the majority of its licenses to one interest or to two corporations owned or controlled by the same interest. It is a question rather for the determination of the city in the public interest of its citizens. The Sherman Act, as the Supreme Court has held, does not include within its reach such restraints as necessarily flow from the regulation of local problems by local governmental bodies. *Parker* v. *Brown,* 1943) 317 U. S. 341; *Field* v. *Barber Asphalt Paving Company,* (1904) 194 U. S. 618.

With respect to Parmelee, the complaint makes two claims. First, it is alleged that Parmelee will not compete with the taxicab operating companies for the latter's business. This claim must refer to the taxicab companies' business other than the transportation of interstate railroad passengers. Since this remaining business is concededly intrastate business no basis exists for holding this claim within the reach of the Sherman Act. Second, it is alleged that the taxicab operating companies will not attempt to compete with Parmelee for contracts with railroads or railroad terminal associations for the transportation of railroad passengers and their luggage. Having in mind a com-

monly known fact that the taxicab business is totally different from Parmelee's both from a standpoint of equipment used and services rendered, the court is of the opinion the allegations referred to are insufficient to charge a conspiracy to restrain trade in this respect. Further, the court is unfamiliar with any principle of law that requires a corporation in an integrated enterprise to compete with an affiliated corporation.

For the reasons indicated defendants' motion to dismiss should be sustained.

WALTER J. LA BUY,
Walter J. La Buy, *Judge,*
United States District Court.

U. S. GOVERNMENT PRINTING OFFICE: 1947

No. 1035

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, APPELLANT

v.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	3
Statement	3
Specification of errors to be urged	18
Summary of argument	20
Argument	24
I. The defendants by conspiring to acquire control over the principal companies operating taxicabs in certain leading cities, for the purpose and with the effect of causing these companies to purchase their taxicabs exclusively from a defendant manufacturer, have engaged in a conspiracy in illegal restraint and illegal monopolization of interstate commerce	26
II. The defendants by conspiring to acquire control over the principal companies providing cab service in Chicago, for the purpose and with the effect of preventing competition between such companies for the business of transporting passengers between railroad stations in Chicago, have engaged in a conspiracy in illegal restraint and illegal monopolization of interstate commerce	41
III. The defendants, by conspiring to exclude others from engaging in taxicab transportation of interstate travelers to and from Chicago railroad stations, have engaged in a conspiracy in illegal restraint and illegal monopolization of interstate commerce	47
Conclusion	61

CITATIONS

Cases:	
Addyston Pipe & Steel Co. v. *United States*, 175 U. S. 211	22, 44
American Tobacco Co. v. *United States*, 328 U. S. 781	23, 48
Apex Hosiery Co. v. *Leader*, 310 U. S. 469	52
Appalachian Coals, Inc. v. *United States*, 288 U. S. 344	41
Associated Press v. *United States*, 326 U. S. 1	27, 41
Bacon v. *Illinois*, 227 U. S. 504	61
Baltimore & Ohio S. W. R. R. Co. v. *Settle*, 260 U. S. 166	54, 55, 56
Bigelow v. *RKO Radio Pictures*, 327 U. S. 251	34
Binderup v. *Pathe Exchange*, 263 U. S. 291	29, 60

740203—47 —1

Cases—Continued

	Page
Black & White Taxicab & Transfer Co. v. *Brown & Yellow Taxicab & Transfer Co.*, 276 U. S. 518	38
Borden's Farm Products Co., Inc. v. *Baldwin*, 293 U. S. 194	46
Champlain Co. v. *Town of Brattleboro*, 260 U. S. 366	56
Dallum v. *Farmers' Co-op Trucking Ass'n*, 46 F. Supp. 785	60
Daniel Ball, The, 10 Wall. 557	42, 56
Delaware L. & W. R. R. v. *Morristown*, 276 U. S. 182	54
Donovan v. *Pennsylvania Co.*, 199 U. S. 279	43
Eastern States Lumber Dealers' Assn. v. *United States*, 234 U. S. 600	27, 35, 40
Fashion Originators' Guild, Inc. v. *Federal Trade Commission*, 312 U. S. 457	28, 35, 40
Georgia v. *Pennsylvania R. R. Co.*, 324 U. S. 439	50
Greater New York Live Poultry C. of C. v. *United States*, 47 F. 2d 156, certiorari denied, 283 U. S. 837	53
Hughes Bros. Co. v. *Minnesota*, 272 U. S. 469	56
Illinois Central R. R. Co. v. *Louisiana R. R. Comm.*, 236 U. S. 157	54
Indiana Farmer's Guide Publishing Co. v. *Prairie Farmer Publishing Co.*, 293 U. S. 268	31, 32
Joseph v. *Carter & Weekes Stevedoring Co.*, Nos. 29 and 30, this Term	59
Kach v. *Monessen Southwestern Ry. Co.*, 151 F. 2d 400	60
Louisiana R. R. Commission v. *Texas & Pacific Ry. Co.*, 229 U. S. 336	55
Lowry v. *Tile, Mantel and Grate Assn.*, 106 Fed. 38	38
Minnesota v. *Blasius*, 290 U. S. 1	61
Montague & Co. v. *Lowry*, 193 U. S. 38	27, 29, 38, 40, 53
National Biscuit Co. v. *Federal Trade Commission*, 299 Fed. 733	32
National Labor Relations Board v. *Baltimore Transit Co.*, 140 F. 2d 51, certiorari denied, 321 U. S. 795	59
National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1	61
Northern Securities Co. v. *United States*, 193 U. S. 197	41, 43
Parker v. *Brown*, 317 U. S. 341	19, 51
Pennsylvania R. R. Co. v. *Knight*, 192 U. S. 21	24, 60, 61
Spokane United Railways, In the Matter of, 60 N. L. R. B. 14	60
Stafford v. *Wallace*, 258 U. S. 495	53, 61
Standard Sanitary Mfg. Co. v. *United States*, 226 U. S. 20	27
Swift & Co. v. *United States*, 196 U. S. 375	25, 53
United States v. *Bausch & Lamb Co.*, 321 U. S. 707	28
United States v. *Capital Transit Co.*, 325 U. S. 357	24, 56, 57
United States v. *Crescent Amusement Co.*, 323 U. S. 173	28, 29, 32, 33, 41, 46
United States v. *Frankfort Distilleries*, 324 U. S. 293	52

Cases—Continued Page

United States v. *General Motors Corp.*, 121 F. (2d) 376, certiorari denied, 314 U. S. 618, rehearing denied, 314 U. S. 710 ... 40

United States v. *Klearflax Linen Looms, Inc.*, 63 F. Supp. 32 ... 33

United States v. *New York Central R. R. Co.*, 272 U. S. 457 ... 52

United States v. *Paramount Pictures, Inc.*, 66 F. Supp. 323 ... 39

United States v. *Pullman Co.*, 50 F. Supp. 123 ... 40

United States v. *Reading Co.*, 253 U. S. 26 ... 28

United States v. *Socony-Vacuum Oil Co.*, 310 U. S. 150 ... 32, 37

United States v. *South-Eastern Underwriters*, 322 U. S. 533 ... 24, 52, 61

United States v. *Southern Pacific Co.*, 259 U. S. 214 ... 43

United States v. *Swift & Co.*, 122 Fed. 529 ... 25

United States v. *Trenton Potteries Co.*, 273 U. S. 392 ... 32

United States v. *Union Pacific R. R. Co.*, 226 U. S. 61 ... 43

United States v. *United Shoe Machinery Co.*, 247 U. S. 32 ... 45

United States v. *United States Steel Corp.*, 251 U. S. 417 ... 38

United States v. *Winslow*, 227 U. S. 202 ... 38

Waiting v. *Jacksonville Paper Co.*, 317 U. S. 564 ... 54

William Goldman Theatres v. *Loew's, Inc.*, 150 F. 2d 738 ... 33, 34

Williams v. *Jacksonville Terminal Co.*, 315 U. S. 386 ... 59

Wootten v. *Wootten*, 151 F. 2d 147 ... 30

Yellow Cab Co. v. *City of Chicago*, 71 N. E. 2d 652 ... 15

Statutes:

Clayton Act, Sec. 3 (15 U. S. C. 14) ... 21

Sherman Act of July 2, 1890, 26 Stat. 209:

Sec. 1, as amended (15 U. S. C. 1) ... 3, 21

Sec. 2 (15 U. S. C. 2) ... 3, 20, 21, 31, 32

Miscellaneous:

Federal Rules of Civil Procedure, Rule 12 (b) ... 4

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1035

THE UNITED STATES OF AMERICA, APPELLANT

v.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court for the Northern District of Illinois (R. 21–27) is reported in 69 F. Supp. 170.

JURISDICTION

The judgment of the district court dismissing the complaint was entered on December 2, 1946 (R. 27). Petition for appeal was filed and allowed on January 27, 1947 (R. 28, 30). The jurisdiction of this Court is conferred by Section 2 of the Act of February 11, 1903, 32 Stat. 823,

15 U. S. C. 29, and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 936, 938, 28 U. S. C. 345. Probable jurisdiction was noted on March 17, 1947 (R. 34).

QUESTIONS PRESENTED

1. Whether a conspiracy to acquire control over the principal companies operating taxicabs in certain leading cities and to cause these companies to purchase taxicabs exclusively from a defendant manufacturer illegally restrains and monopolizes interstate commerce.

2. Whether a conspiracy to acquire control over substantially all companies providing cab service in Chicago and to prevent them from competing for contracts with railroads to transport passengers between railroad stations in Chicago illegally restrains and monopolizes interstate commerce.

3. Whether a conspiracy to acquire control over the principal companies operating taxicabs in Chicago, to induce the city to limit the number of taxicab licenses, and to acquire for themselves priority rights to any new licenses issued by the city, with the effect and purpose of excluding competitors from transportation by taxicab of interstate travelers to and from Chicago railroad stations, illegally restrains and monopolizes interstate commerce.

STATUTE INVOLVED

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, provides in part as follows:

> Section 1 [as amended by the Act of August 17, 1937, 50 Stat. 693]. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *. [15 U. S. C. 1.]
>
> Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *. [15 U. S. C. 2.]

STATEMENT

The complaint filed in this case charges the defendants with violating Sections 1 and 2 of the Sherman Act. The charge laid against them is that they are and have been engaged in a conspiracy to restrain and monopolize (a) all interstate sales of taxicabs to the principal cab operating companies in Chicago, New York, Pittsburgh, and Minneapolis and (b) the transportation by cab of passengers and their luggage between, to, and from railroad stations in Chicago (R. 3–4, 7).

The defendants, appellees here, and the designations by which they will be referred to are:

Defendant	Designation herein
Morris Markin	Markin
Checker Cab Manufacturing Corporation	CCM
Parmelee Transportation Company	Parmelee
Cab Sales and Parts Corporation	Cab Sales
Checker Taxi Company	Checker
Chicago Yellow Cab Company, Inc	Chicago Yellow
Yellow Cab Company	Yellow

Markin is president of CCM and controls (*infra*, p. 5) the various corporate defendants. CCM manufacturers cabs at its factory in Kalamazoo, Michigan, and ships these cabs to purchasers in various states. Parmelee operates cabs in Chicago to transport passengers and their luggage between railroad stations in that city, pursuant to contracts with railroads and railroad terminal associations. It is also the sole stockholder of companies operating taxicabs in Pittsburgh, Minneapolis, and New York City. Cab Sales operates "Checker" cabs in Chicago. Checker at present has no employees and no property other than 1,000 Chicago taxicab licenses which it leases to Cab Sales. Yellow operates "Yellow" cabs in Chicago and Chicago Yellow is a holding company owning all the stock of Yellow. (R. 2–3.)

The defendants filed a motion pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure for judgment dismissing the complaint for failure to state a claim on which relief might be granted

(R. 19–20).[1] The district court, after hearing argument on this motion, held that the complaint failed to state a cause of action (R. 21–27) and entered a judgment dismissing the complaint (R. 27).

Before describing the conspiracy as set forth in the complaint we call attention to the fact that throughout the conspiracy the corporate defendants have been under the control of Markin. He has been president of CCM since 1929 and he owns 47.9% of its stock, 12.2% directly and 35.7% through Cab Sales (R. 3, 5). He has managed and operated Cab Sales from the time of its organization in 1930 and has owned all of its stock since 1934 (R. 12). He has controlled Parmelee since early in 1929 (R. 9), 62% of the stock of which is owned by CCM (R. 2). Parmelee, in turn, has controlled Chicago Yellow since early 1929 through ownership of sufficient stock, 29.5%, to give Parmelee control (R. 2, 9) and Yellow is, as previously stated, a 100% subsidiary of Chicago Yellow. Markin, through Cab Sales, owned substantially all of the stock of Checker from 1932 to 1942, when Markin caused this stock to be sold to certain associates of his in his Chicago taxicab operations, these associates now holding 99% of the Checker stock (R. 3, 13).

[1] The defendants also moved in the alternative for a partial judgment dismissing portions of the complaint (R. 20).

It should also be noted that prior to the defendants' conspiracy the corporate defendants or their predecessors were independent of each other (except for Chicago Yellow's ownership of the stock of Yellow). Likewise, the present cab-operating subsidiaries of Parmelee or their predecessors were independent concerns. (R. 4–5.)

Defendants' conspiracy had its inception in January 1929 when Markin and others initiated a program to merge the more important cab companies operating in Chicago, New York, and other cities. One of the principal purposes of this program was to insure that the cab companies brought under common control would purchase all of their cabs from CCM. (R. 8.)

As a first step in the conspiracy, Parmelee was organized in April 1929. This defendant, which was financed in part by CCM, promptly acquired all of the stock of The Parmelee Company, whose business was transporting passengers between railroad stations in Chicago pursuant to contracts with railroads and railroad terminal associations. In 1934 Parmelee dissolved this company and took over its passenger-carrying business. (R. 9.)

Parmelee, beginning early in 1929, acquired certain companies operating cabs in New York City. It later consolidated them in a wholly owned subsidiary which now holds 2,000 of the some 13,000 taxicabs licenses outstanding in New York City (R. 7). Between October 1929 and June 1930 Parmelee acquired all of the taxicab

companies operating in Pittsburgh and Parmelee now operates the cabs in Pittsburgh through two wholly owned subsidiaries of Parmelee. Early in 1931 Parmelee formed a company to operate cabs in Minneapolis. (R. 9–10.) A wholly owned subsidiary now operates 125 of the 214 cabs licensed in that city (R. 7).

In January 1929 there were 5,289 outstanding taxicab licenses in the City of Chicago, of which Yellow held 2,350, or 44%, and Checker held 1,750, or 33% (R. 4, 5). Shortly after the organization of Parmelee it acquired and has since held sufficient stock of Chicago Yellow to give Parmelee control over the policies and operations of Chicago Yellow, the 100% parent of Yellow (R. 9). In April 1929 Parmelee created a subsidiary and CCM agreed to give this subsidiary a 5% commission on cabs sold by it for CCM (R. 12). A few days after this agreement Yellow purchased 1,000 CCM cabs through Parmelee's subsidiary (*ibid.*). The commission of $95,300 which it collected on this deal was included in the price paid by Yellow for these cabs (*ibid.*).

In January 1929 Checker was a "cooperative" company the stockholders of which were various owners of "Checker" cabs (R. 5). Their agreements with Checker provided that it should hold the record title of and the city licenses for their cabs (*ibid.*). Cab Sales was incorporated in January 1930 and has at all times been managed and operated by Markin, who has owned all of its stock

since 1934 (R. 12). In February 1930 Checker, as part of a settlement of litigation between it and CCM, agreed that its drivers would purchase all of their taxicabs from Cab Sales for a period of five years at a price of $2,350 per cab (*ibid.*). At about the same time CCM appointed Cab Sales as exclusive agent for sales to Checker and agreed to sell its cabs to Cab Sales at $1,906 per cab (*ibid.*). During the five years of the agreement the Checker drivers purchased a large number of cabs from Cab Sales at prices about $400 above the prices at which Cab Sales purchased from CCM (*ibid.*).

In 1931 Cab Sales borrowed $500,000 from Yellow to finance the acquisition of a majority of the stock of Checker. A part of the agreement was that Cab Sales and Checker would purchase from a 100% subsidiary of Chicago Yellow all gasoline and oil used in operating "Checker" cabs. The next year a subsidiary of Yellow loaned Cab Sales an additional $200,000 to finance its purchases of Checker stock and by November 1932 Cab Sales had acquired over 97% of the stock of Checker. As owners of "Checker" cabs defaulted from time to time on their payments for cabs purchased from Cab Sales, it foreclosed on delinquent mortgage notes and took over the ownership and operation of the cabs. Since 1941 it has owned and operated all of the cabs for which Checker holds taxicab licenses. Checker leases the 1,000 licenses which it now has to Cab

Sales for $180 per year per license, which represents an annual payment of $180,000 for the licenses held by Checker (R. 3). (R. 12–13.)

In October 1929 DeLuxe Motor Cab Company had about 400 licenses and was the third largest company operating taxicabs in Chicago. Markin, who had a substantial interest in the company, offered all of its stock to Parmelee for $388,000. The company had been losing money and its net assets (aside from its licenses) were worth only about $92,000 but Parmelee considered that each of its licenses had a value of at least $1,000. Parmelee accordingly accepted Markin's offer and purchased the stock for $388,000 in February 1930. In the same year Parmelee and the president of Checker consolidated the company and certain other independent cab companies into a new company. One of the purposes of both the purchase of the DeLuxe stock and the later consolidation was to prevent an outside company from entering the field in Chicago in competition with Yellow. In 1932 Cab Sales acquired a substantial interest in the consolidated company, caused it to suspend operations, and caused its drivers to enter into contracts with Checker. CCM approved this action since it would aid in preventing interests hostile to CCM from obtaining a competitive position in Chicago. (R. 10.)

In September 1929 the city of Chicago adopted an ordinance providing that no taxicab license should thereafter be issued (other than for re-

newal of outstanding licenses) unless the Public Vehicle License Commission should, after hearing, by resolution, declare that public convenience and necessity require the issuance of additional licenses (R. 5).[2] Accordingly, when the defendants had, by the end of 1932, acquired control of the three largest taxicab companies operating in Chicago, the monopolization thus achieved was effectively protected against inroads. On May 18, 1934, the city adopted an ordinance regulating taxicab licensees which continued the substance of the provisions of the 1929 ordinance respecting issuance of new licenses (R. 5).

In 1929 there were outstanding 5,289 taxicab licenses in Chicago (R. 5). By 1937 the number of such licenses had fallen to 4,071, a 23% decline. Of the 1937 licenses, Yellow had 2,166, or 53%, Checker 1,500, or 37%, and others 405, or 10%. About April 1937 Checker agreed with Yellow to reduce the number of cabs operated by it and Yellow agreed to pay Checker one-half the gross

[2] In the court below the defendants printed as an appendix to their brief the text of certain of the Chicago city ordinances referred to in the complaint. Insofar as such text serves to clarify the allegations of the complaint, reference thereto seems appropriate. It is pertinent to note that the 1929 ordinance provides that the burden of proof shall be upon an applicant for new licenses to establish "by clear, cogent, and convincing evidence" which shall satisfy the Public Vehicle License Commission "beyond a reasonable doubt," that public convenience and necessity require operation of the vehicles for which application is made.

revenue lost by Checker by reason of such reduction. Pursuant to this agreement, Checker reduced its cabs by about 336 to a total of 1,164. During the same period Yellow reduced the number of its cabs by 155 to 1,495. (R. 13–14.)

In the summer of 1937 Yellow and Checker, at the suggestion of Parmelee, agreed to induce the city of Chicago to reduce the total number of taxicab licenses to 3,000, of which Yellow would hold 1,500 and Checker 1,000 (R. 14). On December 22, 1937, the city of Chicago enacted an ordinance providing that if a sufficient number of taxicab licenses should be surrendered to reduce the total to 3,000 by March 31, 1938, the city would thereafter issue no additional licenses except upon transfer to permit replacement of a taxicab or in the annual renewal of an outstanding license (R. 5–6).[3] The ordinance further provided that the city might nevertheless, by general ordinance, authorize issuance of licenses in excess of 3,000 provided that those who had surrendered licenses before March 31, 1938, should have prior right to such additional licenses up

[3] This ordinance was based upon the agreement of Yellow and Checker to surrender licenses, as shown by the following preamble to the ordinance:

"Whereas, certain licensees under the ordinance of May 18, 1934, have agreed to surrender a sufficient number of taxicab licenses to effect a reduction of the number of taxicabs within the City of Chicago to 3,000: * * *"

to the number surrendered by them (R. 6).[4] This ordinance expired by its terms on December 31, 1945, but in June 1945 it was extended for another five years (*ibid.*).

Upon the adoption of this ordinance, Yellow and Checker entered into an agreement implementing it. Their agreement recited that 511 taxicabs for which Yellow held licenses had not been operated for more than 90 days; that Checker maintained that under the terms of the ordinance of May 18, 1934, these 511 licenses were immediately subject to forfeiture;[5] and that the parties to the contract wished to have the taxicab licenses issued by Chicago reduced to 3,000 but that Checker was unwilling to surrender licenses without receiving compensation therefor. The contract provided that, in view of these consider-

[4] The ordinance provided that as between licensees having rights of priority, each would be entitled to additional licenses in the proportion which the number of licenses which he had surrendered bears to the total number of licenses surrendered (R. 6).

[5] Section 7 of the May 18, 1934, ordinance reads:

"Every taxicab shall be operated regularly to the extent reasonably necessary to meet the public demand for taxicab service. In the event that the service of any taxicab is discontinued excepting on account of strikes, acts of God or causes beyond the control of the licensee the commission may give written notice to the licensee to restore such taxicab to service and, if the same is not so restored within five days after such notice, the commission, in its discretion, may recommend to the Mayor that the license for such taxicab be revoked and the Mayor, in his discretion, may revoke same."

ations, Checker would surrender 500 licenses and would sell to Yellow its priority rights respecting reissuance of 260 of the 500 surrendered by Checker, and that Yellow would pay Checker $550 for each license surrendered by Checker, the total payment to be $320,000,[6] and would surrender a sufficient number of its own licenses to bring the total number of all city licenses down to 3,000. The contract further provided that both parties would attempt to secure for Yellow 60% and for Checker 40% of any licenses in excess of 3,000 which the city might later issue. (R. 14–15.)

The foregoing agreement was carried out and Yellow surrendered 571 licenses, which left it with 1,595, and Checker surrendered 500, which left it with 1,000 (R. 15).

With the total number of licenses issued by the city thus reduced 23% from 1937 and 43% from 1929 (*supra*, p. 10), Yellow and Checker (who held 86% of the reduced number of licenses) operated on an average during the period for which figures are stated, at least 15% fewer cabs than the number for which they held licenses. The following table shows for each company, and for the two companies combined, the number of

[6] The agreement, to which Cab Sales was a party, provided that Yellow could make the $320,000 payment in notes which Cab Sales had given for the money which it borrowed from Yellow in order to get control of Checker (R. 14; *supra*, p. 8).

licenses held, the maximum number of cabs operated, and the maximum percentage of licensed cabs which were operated during the years 1938 to 1941, inclusive (R. 15–16):[7]

	1938	1939	1940	1941
Yellow				
Licenses held	1,595	1,595	1,595	1,595
Maximum number cabs operated	1,495	1,351	1,173	1,338
Maximum % licensed cabs operated	94	85	74	84
Checker				
Licenses held	1,000	1,000	1,000	1,000
Maximum number cabs operated	---	927	920	928
Maximum % licensed cabs operated	---	93	92	93
Yellow and Checker				
Licenses held	2,595	2,595	2,595	2,595
Maximum number cabs operated	---	2,278	2,093	2,266
Maximum % licensed cabs operated	---	88	81	87

In January 1946 the Chicago Board of Aldermen passed a resolution authorizing issuance of 250 taxicab licenses to veterans and the Public Vehicle License Commissioner of Chicago issued a notice to Yellow that he would cancel 234 of its licenses because of non-operation of this number of cabs for which it held licenses and he issued a notice to Checker that he would cancel 87 of Checker's licenses for the same reason. Yellow and Checker thereupon brought suit to enjoin the city from issuing new licenses and from cancelling any of the plaintiffs' licenses. In support of their suit, the plaintiffs filed affidavits that causes be-

[7] The complaint does not show the number of cabs operated by Checker in 1938 or in the years subsequent to 1941. As to later years, the maximum number of cabs operated by Yellow was 1,450 in 1942, 1,400 in 1943, 1,200 in 1944, and 1,100 in 1945 (R. 15).

yond their control made it impossible for them to procure taxicabs to replace those which had become inoperable although in fact Yellow, Checker, and Cab Sales could have procured cabs to the full number for which they held licenses if they had been willing and free to purchase cabs manufactured by others than CCM. (R. 16.)

In February 1946 the Circuit Court of Cook County held that acceptance of the 1937 ordinance by Yellow and Checker constituted a contract between them and the city of Chicago which precluded the city from issuing licenses in excess of 3,000 without the consent of Yellow and Checker until the city had first replaced the licenses which they had surrendered in 1938 (R. 6).*

It was part of the defendants' conspiracy that they should control the purchase of taxicabs by the principal cab companies operating in Chicago, Pittsburgh, Minneapolis, and New York and that each such operating company should purchase only cabs manufactured by CCM (R. 7–8). The conspiracy has had the effect, as defendants intended, of preventing Yellow, Checker, Cab Sales, Parmelee and Parmelee's various cab operating subsidiaries from purchasing new cabs from any manufacturer other them CCM; and of requiring these defendants and cab operating subsidiaries to pay more for cabs purchased by them than

* The Supreme Court of Illinois affirmed this decision in January 1947. *Yellow Cab Co.* v. *City of Chicago*, 71 N. E. 2d 652.

they would have had to pay in the absence of the conspiracy, and to increase unnecessarily their other expenditures, which has resulted in high rates being charged the public for the transportation rendered by these companies (R. 16–17).

It was a part of defendants' conspiracy that Yellow and Cab Sales should not compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers and their luggage between railroad stations in Chicago, and that Parmelee should not compete with Yellow or Cab Sales in transporting passengers by cab in Chicago and its vicinity except by contract with railroads and railroad terminal associations (R. 7-8). The conspiracy has had the effect, as intended by the defendants, of eliminating and preventing competition between Yellow, Cab Sales, and Checker, on the one hand, and Parmelee, on the other hand, in the transportation of passengers and their luggage between, to, and from railroad stations in Chicago (R. 16.)

It was a part of defendants' conspiracy that they induce the city of Chicago to reduce the number of taxicab licenses to 3,000, that Yellow and Checker hold 2,595 of said 3,000 licenses, that these two defendants divide among themselves on an agreed ratio any licenses above 3,000 which the city might subsequently issue, that Yellow and Cab Sales not compete by providing more or better service to passengers, and that Yellow and

Checker prevent new operators from engaging in taxicab operations in Chicago by annually renewing licenses for cabs which they did not operate and had no intention of operating (R. 7–8). The conspiracy has had the effect, as intended by the defendants, of eliminating competition between Checker, Cab Sales and Yellow, of successfully preventing others from obtaining licenses from the city of Chicago, and of failure on the part of Yellow, Checker and Cab Sales to operate their cabs to the extent reasonably necessary to meet the public demand for cab service (R. 16–17).

The district court, in holding that the complaint failed to state a cause of action, gave the following reasons for this conclusion. It held that the complaint charged two conspiracies, one, a conspiracy to restrain the transportation by taxicab of railroad passengers between, to, and from railroad stations in Chicago and, two, a conspiracy to restrain interstate sales of taxicabs (R. 21–22). As to the first, the court held that the commerce restraint was intrastate and, in addition, that no restraint of such commerce prohibited by the Sherman Act had been set forth (R. 22–24). As to the second, the court assumed that the legality of defendants' restraint and monopolization of commerce was to be determined with reference to nation-wide sales of taxicabs and the court, having made this assumption, concluded that the commerce which had been restrained or monopolized was too unsubstantial to

come within the Sherman Act (R. 24–25). The court was also of the opinion that this restraint and monopolization was merely the product of the acquisition by CCM of exclusive sales outlets and that the Sherman Act does not prohibit a restraint or monopolization of this kind (R. 25). Finally, the court concluded that the complaint, taken as a whole, represented an attack on the validity of ordinances adopted by the city of Chicago and that the Sherman Act does not authorize such an attack (R. 25–26).

SPECIFICATION OF ERRORS TO BE URGED

The district court erred—

(1) In holding that the complaint charges two conspiracies.

(2) In holding that the complaint does not set forth a conspiracy illegally to restrain and to monopolize interstate commerce in taxicabs.

(3) In holding that, upon the allegations of the complaint, the interstate commerce in taxicabs restrained or monopolized by defendants was too unsubstantial to constitute a violation of the Sherman Act.

(4) In holding that defendants' conspiracy to bring under common control the principal companies operating taxicabs in several leading cities, with the effect and purpose of excluding all manufacturers of taxicabs other than CCM from the business of selling taxicabs to such companies in

interstate commerce, did not violate Sections 1 and 2 of the Sherman Act.

(5) In holding that the transportation by cab of railroad passengers between, to, and from railroad stations in Chicago is not interstate commerce.

(6) In failing to hold that the charge in the complaint that Yellow and Checker, pursuant to defendants' conspiracy, agreed not to compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers between railroad stations in Chicago, sets forth an illegal restraint and illegal monopolization of interstate commerce.

(7) In holding that the charges made in the complaint constitute an attack upon the validity of the taxicab ordinances of the city of Chicago.

(8) In holding that the conspiracy charged in the complaint, insofar as it relates to cab operations in the city of Chicago, is beyond the reach of the Sherman Act under the holding in *Parker v. Brown*, 317 U. S. 341.

(9) In failing to hold that the allegations of the complaint showing that defendants conspired to exclude from the business of carrying passengers between, to, and from railroad stations in Chicago all persons other than the holders of outstanding taxicab licenses issued by the city of Chicago, set forth a conspiracy in illegal restraint and illegal monopolization of interstate commerce.

(10) In granting defendants' motions to dismiss the complaint for failure to state a claim upon which relief can be granted.

(11) In dismissing the complaint.

SUMMARY OF ARGUMENT

I

Defendants' conspiracy to bring under their control the principal companies operating taxicabs in four leading cities and to require the controlled companies to purchase their cabs exclusively from defendant CCM excludes all other manufacturers of taxicabs from 100% of the Pittsburgh market, from 86% of the Chicago market, from 58% of the Minneapolis market and from 15% of the New York City market. Combinations to limit the outlets through which goods may be sold in interstate commerce fall within the ban of the Sherman Act. The conspiracy also restrained the trade of the controlled taxicab companies by preventing them from purchasing cabs from manufacturers other than CCM. A restraint, effected by combination, precluding the free purchase of goods in interstate commerce is as much a violation of the Sherman Act as a like restraint upon the sale of goods.

The facts alleged also show a monopolization of a "part" of interstate commerce within the meaning of Section 2 of the Act. To engross, as to any commodity, interstate trade with those

within a particular area violates both Sections 1 and 2 of the Act. It is therefore without significance that the complaint fails to show that the conspiracy gave to CCM a "monopoly" of the total United States production and sale of taxicabs. The Sherman Act does not permit a relatively small concern, any more than a large one, to fence off for itself, by means of an agreement to eliminate competition, any substantial segment of interstate commerce. Section 3 of the Clayton Act, which makes it illegal to sell goods upon the condition or agreement that the purchaser not deal in goods of a competitor, manifests the policy of Congress if this were otherwise doubtful.

The commerce in taxicabs which the conspiracy restrained and monopolized was substantial, approximating annual sales of $3,000,000. The fact that the taxicab companies and CCM were under common control is no defense. Not only was there no such identity of ownership as might make a subsidiary the mere *alter ego* of its parent but the common control, being achieved by conspiracy and a means for effectuating it, aggravates rather than mitigates the offense.

II

The defendants conspired to acquire control over substantially all taxicab companies operating in Chicago and to prevent them from competing with Parmelee for contracts with railroads pro-

viding for transportation of railroad passengers between railroad stations in Chicago, transportation which is clearly interstate. Elimination of competition by combining to bring competing carriers under common control has been held to violate the Sherman Act where the degree to which competition was eliminated and the purpose to monopolize were far less manifest than in the present case. The defendants conspired not to compete for contracts to furnish interstate transportation, but such a conspiracy violates the Act just as does a conspiracy not to compete for contracts for the sale of goods to be shipped in interstate commerce (*Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211).

Those engaged in general taxicab operations in Chicago are natural competitors for the business of between-station transportation of railroad passengers and the statute makes illegal combinations to prevent potential, as well as existing, competition. If *dehors* the conspiracy there are any legally relevant obstacles to such competition, this is for determination on trial of the issues and not for factual surmises based on judicial notice on a motion to dismiss the complaint.

III

The defendants conspired to acquire control over the principal taxicab companies operating in Chicago, to induce the city to limit the number of

issued taxicab licenses, and to obtain for themselves priority rights to any new licenses which the city might later issue. This is a conspiracy having the purpose and power to exclude competitors from a field of commerce, which is prohibited by Section 2 of the Sherman Act if the commerce is interstate. *American Tobacco Co.* v. *United States*, 328 U. S. 781.

The complaint does not attack the validity of the Chicago taxicab ordinances nor would the relief requested interfere in any respect with the city's regulation of taxicab licenses or licensees. The complaint merely prays that the defendants be enjoined from asserting *against* the city contract rights which the defendants acquired by illegal conspiracy. The requested relief, if granted, far from restricting the city, would enable it to take the very action which the defendants, by judicial proceedings against it, have prevented the city from taking, namely, to issue new licenses to persons other than Yellow and Checker.

A part of the business of taxicab operations from which others have been excluded consists of transporting interstate travelers between their homes, offices, or hotels and Chicago railroad stations. We submit that the interstate trip begins when the traveler takes a taxicab to reach the railroad station and that it ends when he arrives at his intended destination in home, office, or hotel

by taxicab from the railroad terminal. When the intended destination of a shipment of goods is interstate, initial or final transportation wholly within a State, by a carrier operating only therein and making a separate charge for its services, is interstate commerce. Upon the same principles, the regular, daily, known movement by taxicab, of persons embarked on interstate trips, between their homes, offices, or hotels and Chicago railroad stations is interstate commerce.

Residents of the District of Columbia who work in nearby points in Virginia are in interstate commerce when they use the bus and streetcar system of the District as one link in traveling between home and office and when the other link is buses—operated by other carriers and making a separate charge—running between the District and Virginia points. *United States* v. *Capital Transit Co.*, 325 U. S. 357. *Pennsylvania R. R. Co.* v. *Knight*, 192 U. S. 21, upon which the court below relied, involved solely the question whether a tax levied by a State was an invalid encroachment upon federal commerce power. This decision is not apposite; the limits of the commerce power of Congress are not fixed at the point at which state taxing power begins. *United States* v. *South-Eastern Underwriters*, 322 U. S. 533.

ARGUMENT

We submit that the district court clearly erred in interpreting the complaint as charging two

conspiracies. The charge which is laid is that the defendants have been and now are engaged in "a combination and conspiracy to restrain and monopolize interstate trade and commerce in the sale of motor vehicles for use as cabs to the principal cab operating companies" in certain cities "and in the business of furnishing cab services for hire in the city of Chicago, Illinois, and its vicinity" (R. 7). Only one conspiracy is charged and it is not converted into two conspiracies by reason of the fact that it has more than one objective or that it embraces and operates upon more than one kind of interstate commerce. Indeed it is rare for a complaint or indictment charging a conspiracy to restrain or monopolize interstate commerce not to embrace different kinds and categories of commerce. See, for example, *Swift & Co.* v. *United States*, 196 U. S. 375, where this Court upheld the validity of a complaint charging a conspiracy to restrain and monopolize more diverse categories of interstate commerce than those embraced within the conspiracy charged in the instant case.[9]

While there is therefore but one conspiracy before the Court, the different aspects of defendants' conspiracy present different legal questions which require separate treatment and discussion.

[9] The charge in the *Swift* case is summarized at p. 394 and more fully set forth in *United States* v. *Swift & Co.*, 122 Fed. 529, 529–531 (C.C. N. D. Ill.).

I

THE DEFENDANTS BY CONSPIRING TO ACQUIRE CONTROL OVER THE PRINCIPAL COMPANIES OPERATING TAXICABS IN CERTAIN LEADING CITIES, FOR THE PURPOSE AND WITH THE EFFECT OF CAUSING THESE COMPANIES TO PURCHASE THEIR TAXICABS EXCLUSIVELY FROM A DEFENDANT MANUFACTURER, HAVE ENGAGED IN A CONSPIRACY IN ILLEGAL RESTRAINT AND ILLEGAL MONOPOLIZATION OF INTERSTATE COMMERCE

The commerce which is restrained and monopolized by the aspect of the conspiracy with which we are presently concerned—to acquire control over the principal taxicab companies operating in various leading cities to the end that such companies purchase solely taxicabs that CCM has manufactured—clearly is interstate. By virtue of the conspiracy, the taxicab purchases made by these operating companies are all channeled to CCM, a manufacturer located in a state (Michigan) other than the states in which the operating companies do business. Not only does the conspiracy effect a restraint and monopolization of such interstate sales and purchases but it also bars the operating companies from purchasing taxicabs from other manufacturers wherever located. The conspiracy thus directly prevents interstate sales and shipments as between each operating company and all manufacturers other than CCM outside of the state in which the company does business. Moreover, the defendants, as we understand, have never denied that the commerce restrained and monopolized by the aspect of the conspiracy now under

consideration is interstate. The district court assumed it to be interstate and impliedly so held (R. 24–25).

The question whether defendants' restraint and monopolization of this interstate commerce are within the prohibitions of the Sherman Act requires consideration of the nature of the restraint and monopolization effected by the conspiracy.

(1) The conspiracy prevented and was intended to prevent manufacturers of taxicabs other than CCM from selling their products to each of the cab companies brought under the defendants' control. These other manufacturers were thereby totally excluded from the market in the tenth largest city in the country (Pittsburgh), from 86% of the market in the second largest city (Chicago), from 58% of the market in the sixteenth largest city (Minneapolis), and from 15% of the market in the largest city (New York) (*supra*, pp. 6–7, 13). Combinations to restrain and limit the outlets through which goods may be sold in interstate commerce have been repeatedly held by this Court to fall within the ban of the Sherman Act. *Associated Press* v. *United States*, 326 U. S. 1, 18–19. This has been held, to mention only the decisions cited in the *Associated Press* case, with reference to combinations to restrain trade outlets in the sale of tiles (*Montague & Co.* v. *Lowry*, 193 U. S. 38), enameled ironware (*Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20, 48–49), lumber (*Eastern States Lumber Dealers' Assn.* v.

United States, 234 U. S. 600, 611), women's clothes (*Fashion Originators' Guild, Inc.* v. *Federal Trade Commission*, 312 U. S. 457), and motion pictures (*United States* v. *Crescent Amusement Co.*, 323 U. S. 173).

The elimination of manufacturers of taxicabs (other than CCM) from that part of the market over which the defendants obtained control was not only effected by combination but was the direct objective of the combination. Defendants obtained their "dominating power" over the cab companies "by deliberate, calculated purchase for control." See *United States* v. *Reading Co.*, 253 U. S. 26, 57. The control which the defendants sought, obtained, and exercised, and the restraints which flowed from their combination are therefore very different from those which were under consideration in *United States* v. *Bausch & Lomb Co.*, 321 U. S. 707, where a contract between a manufacturer and a customer, neither of which controlled the other, provided that the manufacturer would make a speciality product for the customer and would not sell this product either itself or to other customers.

The engrossment by CCM of the business of selling taxicabs to the controlled operating companies and the exclusion of other manufacturers from such business, which was the purpose and effect of defendants' conspiracy, bears no analogy to an agreement between two or more taxicab companies to purchase from a particular manu-

facturer in order thereby to obtain more favorable terms than would be available if each purchased individually. In *United States* v. *Crescent Amusement Co., supra,* certain affiliated companies engaged in operating motion picture theatres had used their combined buying power to obtain advantages and concessions from distributors of motion pictures. This Court assumed (p. 183), that if a single exhibitor launched such a plan of economic warfare, he would not violate the Sherman Act. "But," said the Court, "the vice of this undertaking was the combination of several exhibitors in a plan of concerted action. * * * It will not do to analogize this to a case where purchasing power is pooled so that the buyers may obtain more favorable terms."

(2) The defendants' conspiracy also prevented the taxicab companies brought under their control from purchasing cabs from manufacturers other than CCM. By the conspiracy, these companies were denied opportunity to deal in a free market in making their purchases and were denied freedom to purchase on the basis of competitive offers. Restraint, effected by combination, precluding the free purchase of goods in interstate commerce is as much a violation of the Sherman Act as a like restraint upon freedom of sale. *Montague & Co.* v. *Lowry, supra; Binderup* v. *Pathe Exchange,* 263 U. S. 291. The restraints imposed upon the operating companies were not

merely theoretically injurious; they were actual and serious. The conspiracy was organized and dominated by Markin, president and a principal stockholder of CCM, the favored manufacturer. A primary objective of the conspiracy was to obtain the business of the controlled taxicab companies for this manufacturer. The inference is compelling that the defendants, being free to dictate the prices and terms upon which these companies bought their cabs, dictated them in favor of the company whose interests the conspiracy was designed to promote.[10] To the degree that the dictated sales prices were above those which CCM could have obtained in a competitive market, the purchasers, the controlled operating companies, were automatically injured. And if there were any lingering doubt as to whether the conspiracy had been carried out in flagrant disregard of the interests of the operating cab companies, this doubt would be removed upon consideration of the "rake-offs" received by certain companies within the controlled group on the cabs which CCM sold to cab operators. The "rake-offs" to which we refer are the excess price of about $400 per cab which drivers of "Checker" cabs were required to pay to Cab Sales (of which Markin is sole stockholder) on

[10] A motion to dismiss admits "all the facts well pleaded and all facts that can be reasonably inferred from the facts alleged." *Wootten* v. *Wootten*, 151 F. 2d 147, 150 (C. C. A. 10).

cabs purchased from CCM and the "commission" of over $95,000 which a hastily organized subsidiary of Parmelee received on 1,000 cabs which CCM sold to Yellow (*supra*, pp. 7, 8).

(3) The facts also indubitably show a violation of Section 2 of the Sherman Act. Section 2 makes it unlawful to conspire to monopolize "any part" of interstate commerce. It stands admitted that the defendants have conspired to monopolize "interstate trade and commerce in the sale of motor vehicles for use as cabs to the principal cab operating companies" in Chicago, Pittsburgh, Minneapolis, and New York, and that they have conspired that each of the principal companies operating cabs in these four cities will purchase as cabs "only motor vehicles manufactured by CCM" (R. 7–8).

The prohibitions of the Sherman Act "have both a geographical and distributive significance and apply to any part of the United States as distinguished from the whole and to any part of the classes of things forming a part of interstate commerce." *Indiana Farmer's Guide Publishing Co.* v. *Prairie Farmer Publishing Co.*, 293 U. S. 268, 279. In the present case the defendants have conspired to the end that a single manufacturer should have a complete monopoly of all sales of taxicabs made to the principal companies operating cabs in four important cities, two of them the largest in the country. There was obviously

a violation of Section 2 if the commerce represented by all sales made to the principal purchasers in these cities constitutes a "part" of interstate commerce within the meaning of Section 2.[11] The decisions, to which we shall refer, establish that this is a part of such commerce.

We have defined the conspiracy to monopolize as it is defined in the complaint since it is the conspiracy, rather than its effectuation, which the statute makes unlawful.[12] But the violation of the statute is equally clear if tested by the acts of the defendants in effectuating the conspiracy, namely, procuring for CCM a monopoly of all sales to all taxicab companies operating in Pittsburgh, to the companies doing 86% of the business in Chicago, 58% of the business in Minneapolis, and 15% of the business in New York.

The *Indiana Farmer's Guide* case squarely held that the legality of an alleged restraint or monopolization of commerce is to be judged solely with reference to the particular commerce (both in kind and area) against which the conspiracy is directed. And in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, the interstate commerce embraced within the conspiracy was the

[11] "It is the exclusion of others from the opportunity of doing business that is regarded as monopolizing." *National Biscuit Co.* v. *Federal Trade Commission*, 299 Fed. 733, 738 (C. C. A. 2).

[12] *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, note 59 at p. 225; *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, 402.

interstate distribution of motion-picture films to companies operating motion-picture theatres in some 70 "small towns" located principally in Kentucky and Tennessee but also in a few places in Alabama, Arkansas, and Mississippi. This conspiracy plainly affected a much smaller proportion of the interstate distribution of motion-picture films than the proportion of interstate sales of taxicabs monopolized by the present defendants. Moreover, the Court's opinion indicates that a conspiracy much more narrowly confined in its impact upon interstate commerce would violate Sections 1 and 2 of the Sherman Act. The Court said (pp. 183–184):

> The showing of motion pictures is of course a local affair. But action by a combination of exhibitors to obtain *an* agreement with *a* distributor whereby commerce with *a competing exhibitor* is suppressed or restrained is a conspiracy in restraint of trade and a conspiracy to monopolize a part of the trade or commerce among the States, each of which is prohibited by the Sherman Act. [Italics supplied.]

It has been held that monopolization of the trade of but a single customer may violate Section 2 of the Sherman Act. *United States* v. *Klearflax Linen Looms, Inc.*, 63 F. Supp. 32 (D. Minn.).

In *William Goldman Theatres, Inc.* v. *Loew's, Inc.*, 150 F. 2d 738 (C. C. A. 3), the combination

charged against the defendants and held illegal involved control of only the "first-run" motion picture theatres "in the centralized theatre district of Philadelphia." The court, citing many cases, said (p. 744):

> We know of no authority which sanctions what would otherwise be an illegal monopoly simply because it operates in a single city or a particular part of a city and affects only a part of an industry involved. There is no such limitation on the effect of the anti-trust laws.

See also *Bigelow* v. *RKO Radio Pictures*, 327 U. S. 251.

The court below held that the question whether the complaint set forth an illegal monopolization of interstate sales of taxicabs was to be determined on the basis of whether, upon the facts alleged, CCM was shown to have a "monopoly" with reference to the total number of taxicabs manufactured and sold in the United States. (R. 24–25). We submit that as the cases cited demonstrate, this holding is clearly erroneous.[13]

[13] We also submit that the court below erred in holding that the sales of taxicabs to the companies operating in Chicago were alone to be considered (R. 25). The court ignored the sales to the controlled companies operating in New York and Minneapolis upon the ground that they were not shown to have a monopoly of the taxicab business in those cities. But the monopolization of sales to these companies is in no way dependent upon whether or not they have monopolies within their own fields. As to Pittsburgh, the court said that the allegations "are too vague to deter-

In the court below the defendants contended that CCM was "merely a flea in the general automobile business" as compared with such giant companies as General Motors, Chrysler, Ford and others. There is nothing in the complaint to show the relative standing of CCM in the manufacture of taxicabs adapted for use in large cities and no facts bearing thereon of which the court might take judicial notice were called to its attention. But in any event the question of relative standing in this field of manufacture is irrelevant. The Sherman Act does not permit a small concern, any more than a large one, to expand or even to maintain its position by forming combinations to eliminate competition and to fence off for itself some substantial segment of interstate commerce. The plea that combination in restraint of trade is permissible if it is a reasonable means of protecting the weak against the strong is an ancient one, but it has not prevailed. *Eastern States Lumber Dealers' Assn.* v. *United States*, 234 U. S. 600, 613. Congress having declared by the Sherman Act that "competition, not combination, should be the law of trade", *(Fashion Originators' Guild, Inc.* v. *Federal Trade*

mine the situation in that city." We submit that, on the contrary, the allegations could hardly be more specific, namely, that "one-half" of the cabs in Pittsburgh are operated by a wholly owned subsidiary of Parmelee and "the other half" by another wholly owned subsidiary (R. 7) and that the defendants have acquired "a complete monopoly of the business of operating cabs in Pittsburgh" (R. 9).

Commission, supra, p. 465) it is not for the courts to rule otherwise.

Furthermore, as to agreements which bind the purchaser of a product to purchase it from the seller exclusively, Congress has explicitly declared its policy. The Clayton Act, which is supplementary to the Sherman Act, provides in Section 3 that it shall be unlawful for any person engaged in interstate commerce to sell goods "on the condition, agreement or understanding" that the purchaser shall not use or deal in the goods of a competitor or competitors of the seller where the effect "may be" to substantially lessen competition or "tend to" create a monopoly "in any line of commerce." The defendants' conspiracy might well be denominated a conspiracy to violate this section. The conspiracy has at all times prevented Yellow, Checker, Cab Sales, Parmelee, and Parmelee's taxicab subsidiaries from purchasing new taxicabs from any manufacturer other than CCM and the conspiracy has excluded all other manufacturers from the opportunity to compete for this business (R. 17). Under such circumstances, the sales by CCM to the operating companies were upon the condition, agreement, or understanding that the purchasers would not buy goods from competitors of CCM.

The court below said that the sales of cabs restrained by the conspiracy are "too unsubstantial to meet the test laid down for a violation of the Sherman Act" (R. 25). We submit that this

statement is incorrect in law and in fact. In a proceeding under Section 1 of the Act "the amount of interstate or foreign trade involved is not material" since Section 1 "brands as illegal the character of the restraint not the amount of commerce affected." *United States* v. *Socony-Vacuum Oil Co., supra,* note 59 at p. 225. The considerations bearing upon a violation of Section 2 have already been discussed (*supra,* pp. 31–34), and it is now necessary only to point out that the taxicab sales which the defendants have conspired to monopolize are not in any sense unsubstantial. Yellow and Checker together hold 2,595 taxicab licenses, Parmelee's taxicab subsidiary in New York holds 2,000 licenses, its subsidiary in Minneapolis 125, and its subsidiaries in Pittsburgh all licenses issued in that city (R. 6–7). If the Pittsburgh licenses are conservatively estimated at 280, defendants monopolize and restrain purchases for replacement of 5,000 licensed taxicabs, without counting Parmelee's 85 nonlicensed cabs (R. 6). If we take $1,800 as the approximate cost of a new taxicab,[14] renewal of this taxicab fleet represents $9,000,000 in sales or $3,000,000 annually on the basis that the life expectancy of licensed taxicabs is about three years.[15]

[14] CCM's sales price in 1929 was about $1,900 (R. 12).

[15] This statement as to life expectancy was made in a resolution adopted by the Council of the city of Chicago on May 24, 1945.

We call attention to the contrasting facts as to commerce in *Montague & Co. v. Lowry*, 193 U. S. 38, where the plaintiffs, dealers in tiles in San Francisco, brought suit to recover damages for the injury resulting from the defendants' combination, which prevented or tended to prevent the plaintiffs from purchasing unset tiles. This Court affirmed a judgment for the plaintiffs which was based upon the defendants' violation of both Sections 1 and 2 of the Sherman Act.[16] The Court (p. 46) deemed it to be immaterial that the sale of unset tiles was less than 1% of the business of tile dealers in San Francisco. The small amount of commerce involved is further shown by the fact that the jury found the plaintiffs' injury to be only $500 (193 U. S. 38, 48).

The district court also said that the legality under the Sherman Act of exclusive dealing arrangements of the nature of those before the court "has long been recognized" (R. 25). The cases which the court cites for this proposition wholly fail to support it.[17] Moreover, the present conspiracy,

[16] See *Lowry* v. *Tile, Mantel and Grate Assn.*, 106 Fed. 38, 45–46 (C. C. N. D. Cal.).

[17] *United States* v. *Winslow*, 227 U. S. 202, and *United States* v. *United States Steel Corp.*, 251 U. S. 417, were merger cases. *Black & White Taxicab & Transfer Co.* v. *Brown & Yellow Taxicab & Transfer Co.*, 276 U. S. 518, involved the validity of a contract made by a railroad giving another company the exclusive right to go upon its premises and into its depot to solicit transportation of baggage and passengers. The question decided was the validity of such a contract at common law in view of a property owner's right to control entrance upon his property and in view of the ad-

to obtain control over certain taxicab companies and thus obtain a monopoly of their business for a fellow conspirator, CCM, is far removed from an ordinary exclusive agency agreement. Agents act as arms of their principal, are under duty to serve his interests, and are subject to his direction. But the taxicab companies controlled by the defendants operate their own businesses, which are in no way related to the manufacturing business of CCM. They do not sell taxicabs for CCM; the cabs which they buy are for their own use. Their ties to CCM are only those imposed by virtue and by force of defendants' conspiracy.

The court below also seemed to think that acquisition of control of the taxicab companies and use of that control to require exclusive purchases from CCM was the equivalent of "the acquisition by a manufacturing company of outlets" (R. 25). We assume that the court viewed the taxicab companies and CCM as constituting branches of a

---

vantages of the exclusive contract in promoting the convenience and safety of passengers. As to *United States* v. *Paramount Pictures, Inc.*, 66 F. Supp. 323 (S. D. N. Y.), we assume that the court's discussion (pp. 353–356) of whether it would require distributors of motion pictures to divest themselves of their theatre holdings was believed pertinent to the present case. As to this, it is to be observed, first, that the Paramount suit was dealing with the nation-wide business of the defendants and, second, that any conclusions reached by the trial court as to the legality under the Sherman Act of distributor ownership of theatres involved an appraisal of all the facts and circumstances shown in that case. The *Paramount* decision, it may be noted, has been appealed to this Court by all parties to the case.

single business. Not only is there not one common enterprise, as already noted, but there is lacking any such identity in ownership as would warrant treating a subsidiary as the mere *alter ego* of its parent. In the case of Yellow, for example, Parmelee owns 29.5% of the stock of Chicago Yellow (Yellow's 100% parent) and CCM owns 62% of the stock of Parmelee (R. 2), so that CCM's ownership interest in Yellow is only 18.3%. As to Cab Sales and Checker, CCM has no ownership interest whatever.[18] In any event, 100% stock ownership in a subsidiary does not negative the possibility that the parent and the subsidiary have entered into an unlawful conspiracy in restraint of trade. *United States* v. *General Motors Corporation, et al.*, 121 F. 2d 376 (C. C. A. 7), certiorari denied, 314 U. S. 618, rehearing denied, 314 U. S. 710. See also *United States* v. *Pullman Co.*, 50 F. Supp. 123 (E. D. Pa.).

Finally, if the taxicab companies had, as independent operators, agreed with each other and with CCM to purchase exclusively from the latter for the purpose of excluding other manufacturers of cabs from the business of selling to the taxicab companies, this would clearly violate the Sherman Act.[19] The fact that engrossment of the business

[18] Markin owns all of the stock of Cab Sales and all of the stock of Checker, formerly owned by Markin, is now owned by associates of Markin in his Chicago taxicab ventures (*supra*, p. 5).

[19] *Montague & Co.* v. *Lowry*, *supra*; *Eastern States Lumber Dealers' Assn.* v. *United States*, *supra*; *Fashion Origi-*

by CCM was effectuated by prior purchase of stock control does not give the combination sanction. What violates the Sherman Act depends upon the actual restraint or monopolization effected, not upon the form which the transaction takes; and the tests are the same whether the restraint or monopolization results from agreement between independent units or from the integration of independent units under common ownership. *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 360, 376–377. Where competition is eliminated by bringing companies under common ownership, the common ownership is no defense to a charge of violating the Act; in fact, the relief requisite may consist of severance of the ties of common ownership. *Northern Securities Co.* v. *United States*, 193 U. S. 197; *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 188–190.

II

THE DEFENDANTS BY CONSPIRING TO ACQUIRE CONTROL OVER THE PRINCIPAL COMPANIES PROVIDING CAB SERVICE IN CHICAGO, FOR THE PURPOSE AND WITH THE EFFECT OF PREVENTING COMPETITION BETWEEN SUCH COMPANIES FOR THE BUSINESS OF TRANSPORTING PASSENGERS BETWEEN RAILROAD STATIONS IN CHICAGO, HAVE ENGAGED IN A CONSPIRACY IN ILLEGAL RESTRAINT AND ILLEGAL MONOPOLIZATION OF INTERSTATE COMMERCE

It stands presently admitted that the defendants conspired to control the principal companies

---

nators' Guild, Inc. v. *United States*, *supra*, at p. 465; *Associated Press* v. *United States*, *supra*, at pp. 18–19.

furnishing cab service in Chicago[20] and that it was a part of their conspiracy that Yellow and Checker should not compete with Parmelee for contracts with railroads or railroad terminal associations for the transportation of passengers between railroad stations in Chicago (R. 7–8). It is also admitted that Chicago is the terminus of a large number of railroads engaged in interstate passenger traffic and that a great majority of the persons making interstate railroad trips which carry them through Chicago must go from one railroad station to another from two blocks to two mile distant (R. 3). Transportation by cab of such passengers is provided pursuant to contracts made with railroads and railroad terminal associations (R. 2, 4).

Under settled principles, the transportation of these passengers is interstate commerce. As early as 1870 this Court held that transportation, within the confines of a State, of goods moving from one State to a destination in another is interstate commerce. *The Daniel Ball*, 10 Wall. 557. The Court, after holding that such transportation is interstate commerce, said (p. 565):

> The fact that several different and independent agencies are employed in transporting the commodity, some acting en-

[20] The complainant identifies them as The Parmelee Company (whose business Parmelee later took over), Yellow, and Checker and DeLuxe Motor Cab Company (the business of both of which Cab Sales took over).

tirely in one State, and some acting through two or more States, does in no respect affect the character of the transaction.

In the present case the railroads providing interstate passenger transportation contract to provide between-station transportation in Chicago. This underlines the interstate character of the transportation. That this transportation is interstate was assumed and impliedly held by the district court (R. 26–27), and the defendants have not contended otherwise.

We submit that it is equally clear that a conspiracy to eliminate all competition as to such transportation is one which is in restraint and monopolization of commerce within the meaning of the Sherman Act. The bringing under common control of competing carriers has been held to violate the Act where there was a far less complete elimination of competition and where the purpose to monopolize was far less clear than in the present case. *Northern Securities Co.* v. *United States*, 193 U. S. 197; *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61; *United States* v. *Southern Pacific Co.*, 259 U. S. 214.

In the court below the defendants contended that since it is not illegal for a railroad to make a contract providing that one company shall have the right and duty of transporting passengers from one Chicago railroad station to another (*Donovan* v. *Pennsylvania Co.*, 199 U. S. 279),

any restraint or monopolization of this interstate commerce set forth in the complaint is the act of the railroads and is not attributable to the defendants. We submit that this contention wholly misconceives the nature of the illegal restraint and monopolization charged against the defendants. What the complaint charges is that they conspired to eliminate competition in obtaining from railroads or railroad terminal associations contracts providing for transporting passengers between Chicago railroad stations. Such a conspiracy violates the Sherman Act, just as a conspiracy to bid collusively, i. e., on a non-competitive basis, for the procuring of contracts providing for sale of goods to be shipped in interstate commerce violates the Act. *Addyston Pipe & Steel Co.* v. *United States,* 175 U. S. 211. The fact that the company submitting the most favorable offer might or would obtain an exclusive contract for the transportation service does not make the conspiratorial failure to compete for contracts any the less a restraint and monopolization.

The court below said: "Having in mind a commonly known fact that the taxicab business is totally different from Parmelee's both from a standpoint of equipment used and services rendered, the court is of the opinion the allegations referred to are insufficient to charge a conspiracy to restrain trade" as to between-station transportation (R. 27). If it be a fact that Parmelee

operates cabs carrying seven to ten passengers, as defendants stated in their brief below, it does not follow that the railroads would insist upon such equipment if ordinary taxicabs would furnish the required transportation service at a lower cost to the railroads. And the fact, if it be so, that the obligations imposed by the city on licensed taxicabs would bar use of such taxicabs for between-station transportation is equally immaterial. General taxicab service and between-station service may be distinct fields of operation, but a company engaged in one field is a natural potential competitor for entrance into the other."

The charge of the complaint is that the defendant companies operating taxicabs in Chicago have, by conspiracy, agreed to refrain from competing for the business of between-station transportation of passengers pursuant to contracts with railroads. If there are obstacles *dehors* the conspiracy which would make competition for this business impractical or unlikely, this is a matter for determination on trial of the cause, not for disposition on the basis of vague surmises as to facts of doubtful legal relevance "commonly known", on a motion to dismiss the complaint for failure to state a cause of action. Any facts of this nature which might be sufficient to answer

---

[2] The Sherman Act makes no distinction "between strangling of commerce which has been born and preventing the birth of a commerce which does not exist." *United States* v. *United Shoe Machinery Co.*, 247 U. S. 32, 53.

the charge of illegal conspiracy made in the complaint must be established by proof and with precision, by the ordinary process of proof and counterproof on trial of the cause."[22]

The final statement of the district court in the present connection is that it is "unfamiliar with any principle of law that requires a corporation in an integrated enterprise to compete with an affiliated corporation" (R. 27). We submit that, here again, the charge leveled against the defendants was misunderstood. Under the allegations of the complaint, the affiliation of the corporations in question was both an essential part of the conspiracy not to compete and was a means of achieving this objective. The affiliation, rather than condoning the offense, aggravates it. In *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 189, this Court said:

> Dissolution of the combination will be ordered where the creation of the combination is itself the violation [citing cases]. Those who violate the Act may not reap the benefits of their violations and avoid an undoing of their unlawful project on the

[22] This Court has said, with reference to taking judicial notice of facts bearing upon the constitutionality of legislation, that "when it becomes necessary for the Court to deal with the facts relating to particular commercial or industrial conditions, they should be presented concretely with appropriate determinations upon evidence, so that conclusions shall not be reached without adequate factual support." *Borden's Farm Products Co., Inc.* v. *Baldwin*, 293 U. S. 194, 210.

> plea of hardship or inconvenience. That principle is adequate here to justify divestiture of all interest in some of the affiliates since their acquisition was part of the fruits of the conspiracy. But the relief need not, and under these facts should not, be so restricted. The fact that the companies were affiliated induced joint action and agreement. Common control was one of the instruments in bringing about unity of purpose and unity of action and in making the conspiracy effective.

In this case the appellees were charged with monopolizing commerce. To accept the view of the court below would be to hold that a monopoly once acquired is thereafter legal. The mere statement of the proposition is adequate refutation.

[redacted]

THE DEFENDANTS, BY CONSPIRING TO EXCLUDE OTHERS FROM ENGAGING IN TAXICAB TRANSPORTATION OF INTERSTATE TRAVELERS TO AND FROM CHICAGO RAILROAD STATIONS, HAVE ENGAGED IN A CONSPIRACY IN ILLEGAL RESTRAINT AND ILLEGAL MONOPOLIZATION OF INTERSTATE COMMERCE

The complaint charges that the defendants conspired to acquire control over the principal taxicab companies operating in Chicago; to induce the city of Chicago to limit the number of licensed taxicabs to 3,000; to hold 2,595, or 86% of such 3,000 licenses; to obtain for Yellow and Checker any licenses above 3,000 which the city of Chicago might subsequently issue; and to prevent new operators from entering the cab business in Chi-

cago by the annual renewal by Yellow and Checker of licenses for cabs which they did not operate and had no intention of operating (R. 7–8).

(1) If the general taxicab business in Chicago were interstate commerce, there could be no doubt that these allegations would set forth a violation of the Sherman Act. "Attainment or maintenance by the members of a conspiracy of the power to dominate and control a field of interstate commerce to such an extent that they are able, as a group, to exclude actual or potential competitors from the field, accompanied with the intention to exercise such power, is a monopolization of interstate commerce prohibited by Section 2 of the Sherman Act. *American Tobacco Co.* v. *United States,* 328 U. S. 781, 784–785, 814–815. Since the allegations referred to above show that defendants' conspiracy embraced all of these elements of illegal monopolization, the complaint necessarily charges a conspiracy to monopolize which, if the commerce to which it applies is interstate, is illegal under the Act. The fact that the complaint shows that the defendants not only conspired to obtain power to exclude competitors but also that, in carrying out their conspiracy, competitors were actually excluded (R. 16, 17) makes the violation of the statute the more glaring.[23]

[23] It is also alleged that by reason of the conspiracy Yellow, Checker, and Cab Sales have not operated their cabs to the

(2) The court below held that, irrespective of other considerations, the charge against the defendants must fail because the complaint constitutes an attack upon the validity of ordinances of the city of Chicago and, accordingly, an attack upon exercise by the city of its police power (R. 25–26). We submit that this conclusion is erroneous. The defendants acquired and maintain their monopolistic position in the Chicago taxicab field, first, by bringing under their control the three principal companies operating in this field and, second, by inducing the city of Chicago to reduce the number of taxicab licenses to 3,000 and to give to Yellow and Checker priority rights to any additional licenses which the city might later issue. The complaint does not bring into issue the validity of such action insofar as the city is concerned, and no relief which is sought would in any respect touch upon exercise by the city of the power vested in it to limit the number of issued taxicab licenses and to determine who should be the recipients of such licenses as it does issue.

The charge of the complaint merely requires that the courts take cognizance of the fact that the defendants have fortified their monopolistic position by inducing certain action by the municipality of Chicago and that the courts bar the defendants from asserting against the city con-

extent reasonably necessary to meet the public demand for cab service (R. 17).

tract rights which the defendants have acquired by virtue of their illegal conspiracy.[24] If the requested relief should be granted, the prohibitions of the decree, both in form and in substance, would run solely against the defendants. Under such decree, the city would be free to continue to issue only 3,000 licenses. If it decided to issue additional licenses the decree, far from curbing the city, would give it greater freedom of action than it now has since Yellow and Checker would not be permitted to assert against the city their priority rights to new licenses. The decree, in short, would enable the city to do precisely what it sought to do in 1946, namely, issue additional taxicab licenses to persons other than Yellow and Checker, which these defendants prevented when they obtained a judgment enjoining such action by the city (R. 16). Moreover, the city, if it should determine that Yellow and Checker, although having no enforceable priority rights as to new licenses, should nevertheless receive some or all of such additional licenses as the city might decide to issue, the decree entered in the present cause would not be a bar.

In *Georgia* v. *Pennsylvania Railroad Co.*, 324 U. S. 439, 460, this Court, discussing an analogous situation, said that the bill of complaint in that case would "free the rate-making function of the

[24] The prayer for relief is that the defendants be required to release and waive their priority rights to new licenses issued by the city (par. C of Prayer, R. 17).

influences of a conspiracy over which the [Interstate Commerce] Commission has no authority but which if proven to exist can only hinder the Commission in the tasks with which it is confronted." [25]

Parker v. *Brown*, 317 U. S. 341, which the district court thought to be a controlling authority, held only that the Sherman Act does not apply to a restraint of trade imposed by a State. We submit that this decision has no application here. The contract rights under the Chicago city ordinances which Yellow and Checker acquired by illegal conspiracy are not commands of the municipality; indeed, the city sought to escape its contractual obligation.[26] Nothing done by the city required appellees to engage in any of the alleged illegal activities; hence the exclusion of new licensees from taxicab operations is not a restraint imposed by the municipality but one which the defendants impose by the enforcement of illegally acquired contract rights.

[25] The dissent in that case did not, as we understand, disagree with the view of the majority that a violation of the antitrust law might be established by showing the existence of a conspiracy to subject the rate-making process to influences which exceed the limits of the collaboration authorized for the fixing of joint through rates. The dissenting opinion indicates that it would be appropriate for the United States to bring proceedings making charges such as those made in the complaint filed by the State of Georgia (324 U. S. 439, 489).

[26] The ordinance creating these rights expressly provides that they shall terminate if the grantees thereof release their rights (R. 6).

Injunction against enforcement of contracts or rights acquired by contract which operate to restrain or monopolize trade is one of the commonest forms of relief granted when violation of the Sherman Act has been found.

(3) The complaint, as we have already pointed out (*supra*, pp. 47–48), sets forth a conspiracy to exclude others from the business of transporting persons by cab in Chicago. A part of the business from which others are thus excluded consists of transporting persons making interstate trips from home, office, or hotel in Chicago to a railroad station and from a Chicago railroad station to home, office, or hotel. The complaint alleges that many persons use taxicabs to make this first lap and this last lap of their interstate trips (R. 4).

In approaching the question whether such taxicab transportation is interstate commerce it must be borne in mind that Congress, in passing the Sherman Act, intended to exercise the full measure of its constitutional power over interstate commerce.[27] The fact that such transportation as is interstate is closely intermingled with taxicab operations which are purely local does not remove the former from the reach of the commerce power,[28] and the Sherman Act applies to a re-

[27] *United States* v. *Frankfort Distilleries, Inc.*, 324 U. S. 293, 298; *United States* v. *South-Eastern Underwriters*, 322 U. S. 533, 558; *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 495.

[28] *United States* v. *New York Central R. R. Co.*, 272 U. S. 457, 464.

straint or monopolization of the interstate aspects of a trade or business which is primarily, or even almost exclusively, intrastate.[29]

Another consideration to be borne in mind is that the transportation of interstate passengers to and from Chicago railroad stations constitutes a regular, daily, known movement of considerable magnitude.[30] The transportation is a "typical, constantly recurring course" of commerce, a "current of commerce", analogous to the current of commerce deemed to impress with an interstate character the buying and selling of livestock on a public stockyards which serves as a throat for the movement of cattle from the farms of the West for ultimate destination, in the form of meat, in eastern markets. *Swift & Co.* v. *United States,* 196 U. S. 375, 398–399. Accord, *Stafford* v. *Wallace,* 258 U. S. 495, 517–521.

When the movement of goods from one State to another involves a break or pause between shipment within a State and shipment between States, the general rule is that the goods are in interstate commerce at each stage of the movement if the parties to the shipment intended that they be carried from the starting point in one State to a point of destination in another. "When freight actually starts in the course of transpor-

[29] *Montague & Co.* v. *Lowry,* 193 U. S. 38, 46; *Greater New York Live Poultry C. of C.* v. *United States,* 47 F. 2d 156, 159 (C. C. A. 2), certiorari denied, 283 U. S. 837.

[30] A trial might establish the approximate volume of this commerce, both absolutely and relatively.

tation from one State to another it becomes a part of interstate commerce" and the interstate character which it thereby acquires "continues at least until the load reaches the point where the parties originally intended that the movement should finally end." *Illinois Central R. R. Co.* v. *Louisiana R. R. Comm.*, 236 U. S. 157, 163. The mere fact that goods received from outside a State are reshipped by the consignee, after brief interval, to another point in the State of receipt does not establish an essential continuity of movement to the latter point, but cases of this character are to be distinguished from those "where the essential nature of the traffic as a through movement to the point of ultimate destination is shown by the original and persisting intention of the shippers." *Baltimore & Ohio S. W. R. R. Co.* v. *Settle*, 260 U. S. 166, 173–174. See also *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, 568–569.

In the present case there is no significant pause or break between the taxicab trip to or from a Chicago railroad station and the railroad trip from or to the station.[30a] The journey is thus a continuous one by taxicab and railroad, and generally the traveler's intended destination from the beginning of his trip is, not the railroad sta-

[30a] The "ability of the traveler to obtain conveniently * * * a taxicab to convey him and his hand-baggage to his ultimate destination, is an essential of adequate rail transportation." Brandeis, J., concurring in *Delaware L. & W. R. R.* v. *Morristown*, 276 U. S. 182, 198.

tion, but the home, office, or hotel which he wishes to reach—just as they are the actual starting point of interstate trips. The fact that the traveler goes to or from the station by taxicab, thus selecting a direct and quick medium of transportation, serves to make the taking of the cab or the leaving of it the true starting point or ending point of the interstate journey. It is immaterial that in individual instances the facts might negative this conclusion. We are here concerned with exclusion from a business which comprises taxicab transportation of interstate travelers to and from Chicago railroad stations; a conspiracy to exclude competitors from rendering this transportation service is a restraint and monopolization of interstate commerce if the transportation is, in its generality, interstate.

The fact that the traveler pays two fares, one to the taxicab operator and one to the railroad, is by no means decisive that the interstate trip begins and ends in the railroad station. When the actual destination of goods is in another State or a foreign country they are in interstate commerce during an initial movement wholly within a State although this initial movement and the subsequent movement beyond the State are made under separate bills of lading.[31] The interstate character of the transportation is not destroyed by reason of

[31] *Louisiana R. R. Commission* v. *Texas & Pacific Ry. Co.*, 229 U. S. 336, 341; *Baltimore & Ohio S. W. R. R. Co.* v. *Settle*, 260 U. S. 166, 170.

the fact that during the initial movement within one State the shipper has power to divert the goods from the intended interstate destination [32] or by reason of the fact that such initial movement is by one carrier and the movement beyond it by another.[33] Furthermore, the considerations which determine when interstate commerce ends are the same as those which determine when it begins.[34]

United States v. *Capital Transit Co.*, 325 U. S. 357, would seem to be decisive that taxicab transportation of interstate travelers to and from Chicago railroad stations is interstate commerce. The Capital Transit and three other companies operated buses between the District of Columbia and nearby points in Virginia where there were Government offices employing many District residents. Capital Transit also operated streetcars and buses within the District and accorded to passengers on its system the privilege of transfer to and from some of its Virginia buses. The case presented the question of the validity of an order of the Interstate Commerce Commission which required Capital Transit to establish joint through fares with the three other companies running buses between the District and points in Virginia covering transportation on the Capital Transit's

[32] *Champlain Co.* v. *Town of Brattleboro*, 260 U. S. 366, 376; *Hughes Bros. Co.* v. *Minnesota*, 272 U. S. 469, 476.

[33] *The Daniel Ball*, *supra*; *Hughes Bros. Co.* v. *Minnesota*, *supra*.

[34] *Baltimore & Ohio S. W. R. R. Co.* v. *Settle*, *supra*.

streetcars and buses in the District and bus transportation between the District and Virginia. The statute authorized the Commission to prescribe through rates for interstate transportation involving two or more motor carriers but not for such transportation involving a motor carrier and some other type of carrier. The Commission concluded that since Capital Transit and the other three companies were motor carriers and since Capital Transit was using streetcars and buses as an integrated unit in carrying out interstate transportation, the Commission had authority to prescribe through rates for all segments of Capital Transit's interstate transportation.

This Court held that the Commission's order was within its authority. The interstate nature of the transportation within the District of those whose place of employment was in Virginia and who traveled to and from the District over the lines of other, wholly independent carriers was an essential element of the Court's holding. As to the interstate nature of such transportation, the Court said (p. 363):

> Their interstate journey to work actually began at the time they boarded a Transit bus or streetcar near their home, and actually ended when they alighted from the Virginia-going bus at their place of work.

> On returning from work their interstate journey actually began when they boarded a bus near their work and actually ended when they alighted from a Transit streetcar or bus near their home. True, their interstate trip was broken at the District termini of the Virginia buses, when they stepped from one vehicle to another. But in the commonly accepted sense of the transportation concept, their entire trip was interstate.

General transportation by streetcars and buses within the District of Columbia is just as much local as is general transportation by taxicab in Chicago. If the former transportation is interstate as to those using this system of transportation as the first or last lap in interstate trips, involving as to the actual interstate movement another carrier and a separate fare, so is the transportation by taxicab of interstate travelers to and from Chicago railroad stations. Of the two, the latter would seem the more clearly interstate commerce since the taxicab is engaged by the traveler himself as a means of beginning or ending his interstate trip whereas interstate passengers on Capital Transit's streetcars and buses form merely a part of the general body of passengers which they carry.

The Fair Labor Standards Act applies to employees "engaged in [interstate] commerce." In

a case brought to determine whether porters at a railroad terminal station were being paid the minimum wages specified by that Act, the defendant terminal company stipulated that the porters were engaged in interstate commerce. *Williams* v. *Jacksonville Terminal Co.*, 315 U. S. 386, 391.[35] If those who assist passengers by carrying their bags between trains and station exists and who are thus links between the transportation media by which passengers arrive at or leave a railroad station and the railroad cars which bring them into or take them from the station are in interstate commerce, transportation by taxicab to or from the station would also seem to be interstate commerce.

In *National Labor Relations Board* v. *Baltimore Transit Co.*, 140 F. 2d 51, 53 (C. C. A. 4), certiorari denied, 321 U. S. 795, one of the grounds upon which the court held that the National Labor Relations Act applies to a company operating streetcars and buses in Baltimore and not crossing any state line was that the cars and buses "carry

[35] In *Joseph* v. *Carter & Weekes Stevedoring Co.*, Nos. 29 and 30, this Term, decided March 10, 1947, it was held that a business which consisted "only of taking freight from a convenient place on the pier or lighter wholly within the territorial limits of New York City and storing it properly for safety and for handling in or on the outgoing [in commerce] vessels alongside, or similarly unloading a vessel on its arrival" was "essentially a part of the commerce itself."

persons traveling in interstate commerce to and from the stations and wharves of interstate carriers."[36]

In the present case the court below was of the opinion that *Pennsylvania R. R. Co.* v. *Knight*, 192 U. S. 21, established that taxicab transportation of interstate travelers to and from Chicago railroad stations is not interstate commerce. That case held that the Commerce Clause did not bar the State of New York from imposing a franchise tax on the business of operating cabs for carrying persons to and from the New York terminus of a ferry line between New York and New Jersey. The carriage by cab was wholly within New York and the charge for this service was separate from the charge made for further transportation.

We are not here concerned with the holding as to the taxing power of a State; it has been repeatedly pointed out that it "does not follow that because a thing is subject to state taxation it is also immune from federal regulation under the Commerce Clause" (*Binderup* v. *Pathe Exchange*, 263 U. S. 291, 311).[37] But the view expressed in

[36] See also *Kach* v. *Monessen Southwestern Ry. Co.*, 151 F. 2d 400 (C. C. A. 3); *Dallum* v. *Farmers' Co-op. Trucking Assn.*, 46 F. Supp. 785 (D. Minn.); *In the Matter of Spokane United Railways*, 60 N. L. R. B. 14, 15–16.

[37] In cases involving state tax or regulatory powers the question "is not with respect to the extent of the power of

the *Knight* case (p. 28) that the cab service was "an independent local service, preliminary or subsequent to any interstate transportation" cannot, we submit, be reconciled with later decisions of this Court. In *Stafford* v. *Wallace*, 258 U. S. 495, 528, the Court said that the *Knight* case does not mean that federal commerce power does not extend to transportation by cab when and if this is used in a conspiracy "to monopolize interstate passenger traffic." And in *United States* v. *South-Eastern Underwriters*, 322 U. S. 533, 544–553, this Court considered and rejected the argument that the business of insurance was not Interstate Commerce within the purview of the Sherman Act because of the many decisions sustaining the power of the states to regulate and tax that business.

CONCLUSION

For the reasons stated, the judgment of the district court should be reversed, with directions to deny the defendants' motion to dismiss the complaint and their alternative motion for a

---

Congress to regulate interstate commerce, but whether a particular exercise of state power, in view of its nature and operation must be deemed to be in conflict with this paramount authority." *Bacon* v. *Illinois*, 227 U. S. 504, 516. See also *Stafford* v. *Wallace*, *supra*, p. 526; *Minnesota* v. *Blasius*, 290 U. S. 1, 8; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 37.

partial judgment dismissing portions of the complaint.

Respectfully submitted.

GEORGE T. WASHINGTON,
Acting Solicitor General.
WENDELL BERGE,
Assistant Attorney General.
CHARLES H. WESTON,
HERBERT BORKLAND,
PHILIP MARCUS,
Special Assistants to the Attorney General.

APRIL 1947.

U. S. GOVERNMENT PRINTING OFFICE 1947

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1035

THE UNITED STATES OF AMERICA,
Appellant,

vs.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

MOTION TO DISMISS OR AFFIRM

HOWARD ELLIS,
A. L. HODSON,
SAMUEL H. KAUFMAN,
HAROLD A. SMITH,
CHARLES CALDERINI,
JULIUS ALTMEYER,
PHILIP E. RINGER,
Counsel for Appellees.

INDEX

Subject Index

	Page
Motion to dismiss or affirm	1, 3
Introductory	3
Statement of the case	4
Argument	6
I—Neither the assertion by Yellow and Checker of the license and priority rights conferred on them by the Ordinances of the City of Chicago, even to the exclusion of other potential licensees, nor their operations under such ordinances, constitute a restraint or monopoly under the Sherman Act	6
II—The furnishing of taxicab services in Chicago is not interstate commerce and accordingly is not subject to the Sherman Act	7
III—The rendering of different services by Yellow-Checker and Parmelee does not result in a restraint or monopoly under the Sherman Act	9
IV—The purchase of cabs by Yellow, Checker and Parmelee exclusively from CCM does not constitute a monopoly or restraint under the Sherman Act	11
Conclusion	13
Appendix—Opinion of the Supreme Court of Illinois in the case of *Yellow Cab Co.* v. *City of Chicago*	15

Table of Cases Cited

Appalachian Coals, Inc., v. *U. S.*, 288 U. S. 344	13
Federal Trade Commission v. *Curtis Publishing Co.*, 260 U. S. 568	13
Field v. *Barber Asphalt Paving Co.*, 194 U. S. 618	6

Page

New York, ex rel. Pennsylvania Railroad Co. v. *Knight*, 192 U. S. 21 8
Parker v. *Brown*, 317 U. S. 341 6
Stafford v. *Wallace*, 258 U. S. 495 ..... 8, 9
Swift & Co. v. *U. S.*, 196 U. S. 375 9
U. S. v. *Bausch & Lomb Co.*, 321 U. S. 707 13
U. S. v. *Capital Transit Co.*, 325 U. S. 357 9
U. S. v. *General Electric Co.*, 272 U. S. 476 13
U. S. v. *Keystone Watch Case Co.*, 218 Fed. 502, 257 U. S. 664 12
U. S. v. *Paramount Pictures, Inc.*, 66 Fed. Supp. 323 ..... 12, 13
U. S. v. *U. S. Steel Corporation*, 251 U. S. 417 12
U. S. v. *Winslow*, 227 U. S. 202 12

STATUTES CITED

Accomplishment Report for Year 1942, O. D. T. Division of Local Transport 4
Expediting Act, Section 2 (32 Stat. 823, 15 U. S. C. A. 29) 4
Judicial Code, Section 238 (36 Stat. 1157, 28 U. S. C. A. 345) 5
Ordinance of the City of Chicago of September 25, 1929 (Mun. Code of Chicago (1931 Ed.), Chap. 41) 5
Ordinance of the City of Chicago of May 18, 1934 (Mun. Code of Chicago, Chap. 195A) 5
Ordinance of the City of Chicago of December 22, 1937 (Mun. Code of Chicago, Chap. 196A) 5
Ordinance of the City of Chicago of June 26, 1945 (Mun. Code of Chicago, Chap. 196A) 5
Rules of Civil Procedure, Rule 12(b) 3
Sherman Act, Sections 1 and 2 (26 Stat. 209, 15 U. S. C. A. 1 and 2) 4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1035

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

YELLOW CAB COMPANY, ET AL.,
Defendants-Appellees

MOTION TO DISMISS OR AFFIRM

The defendants move, pursuant to Rule 12, paragraph 3, and Rule 7, paragraph 4, of the Supreme Court Rules, to dismiss the appeal taken by the plaintiff January 27, 1947 from the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, entered December 2, 1946, dismissing the complaint in this action, or to affirm said judgment, on the ground that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

HOWARD ELLIS,
A. L. HODSON,
KIRKLAND, FLEMING, GREEN, MARTIN & ELLIS,
Attorneys for Defendants-Appellees, Yellow Cab Company and Chicago Yellow Cab Company, Inc.;

SAMUEL H. KAUFMAN,
KAUFMAN, GALLOP, CLIMENKO, GOULD & LYNTON,
HAROLD A. SMITH,
CHARLES CALDERINI,
WINSTON, STRAWN & SHAW,
Attorneys for Defendants-Appellees, Checker Cab Manufacturing Corporation and Morris Markin;
JULIUS JESMER,
JESMER & JESMER,
Attorneys for Defendants-Appellees, Checker Taxi Company and Cab Sales and Parts Corporation;
PHILIP E. RINGER,
RINGER, REINWALD & SOSTRIN,
Attorneys for Defendant-Appellee, Parmelee Transportation Company.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1035

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

YELLOW CAB COMPANY, ET AL.,
Defendants-Appellees

MOTION TO DISMISS OR AFFIRM

Introductory

The defendants-appellees (referred to as defendants) move under Rule 12, paragraph 3, and Rule 7, paragraph 4, of the Rules of this Court, to dismiss this appeal or affirm the judgment appealed from, on the ground that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

This is a direct appeal, taken January 27, 1947, from a judgment of the District Court for Northern Illinois, entered December 2, 1946, dismissing the complaint, under Rule 12(b) of the Rules of Civil Procedure, for failure to

state a claim upon which relief can be granted. The complaint asserts an equitable action for claimed violations of Sections 1 and 2 of the Sherman Act (26 Stat. 209, 15 U. S. C. A. §§ 1, 2). Jurisdiction for such review is based on Section 2 of the Expediting Act (32 Stat. 823, 15 U. S. C. A. § 29) and Section 238 of the Judicial Code (36 Stat. 1157, 28 U. S. C. A. § 345).

Statement of the Case

The complaint charges that the defendants have conspired to restrain and monopolize interstate trade and commerce (a) in the business of furnishing cab services for hire in Chicago; and (b) in the sale of motor vehicles for use as cabs to the principal cab operating companies in Chicago, Pittsburgh, New York, and Minneapolis.

The defendant Yellow Cab Company (referred to as Yellow) and the defendant Cab Sales & Parts Corporation (referred to as Checker) operate taxicabs in Chicago, pursuant to licenses issued by the City of Chicago. All of Yellow's stock is owned by the defendant Chicago Yellow Cab Company which is included in the designation Yellow; and Checker's taxicab licenses are leased from the defendant Checker Taxi Company which is included in the designation Checker.

The defendant Parmelee Transportation Company (referred to as Parmelee) operates unlicensed limousine-coaches in Chicago, which transport railroad passengers between Chicago railroad stations, pursuant to contracts with railroads; and also owns subsidiaries which operate or manage the operations of a number of taxicabs in New York, Pittsburgh and Minneapolis.

The defendant Checker Cab Manufacturing Corporation (referred to as CCM) manufactures cabs in Michigan and sells them. The individual defendant Morris Markin is

president of CCM and is included in the designation CCM.

The complaint charges, and for the purposes of this motion the defendants concede, that CCM has acquired stock control of Yellow, Checker and Parmelee.

Operations of taxicabs in Chicago are comprehensively regulated by ordinances of the City of Chicago (Ordinance of September 25, 1929 (Mun. Code of Chicago (1931 ed.) Chap. 41); Ordinance of May 18, 1934 (Mun. Code of Chicago, Chap. 195A); Ordinance of December 22, 1937 (Mun. Code of Chicago, Chap. 196A); Ordinance of June 26, 1945 (Mun. Code of Chicago, Chap. 196A)). These ordinances place limitations on the number of taxicab licenses which may be issued (subject to increases, on showing of public convenience and necessity); establish rates and standards of service; and otherwise provide for detailed regulation.

The 1937 ordinance, subsequently extended in 1945, reduced the number of outstanding taxicab licenses to 3,000, through voluntary surrenders by licensees; and granted the surrendering licensees a prior right to new licenses, on any subsequent increase, equal to the number of licenses surrendered by them.

Yellow presently owns 1,595 Chicago licenses and has priority rights to 571 new licenses. Checker presently owns 1,000 Chicago licenses and has priority rights to 500 new licenses.

On January 22, 1947, the Supreme Court of Illinois, affirming a decision of the Illinois Circuit Court rendered February 5, 1946, held that the mentioned ordinances, and Yellow and Checker's license and priority rights under such ordinances, were valid; and that no monopoly existed, since the number of licenses and the rights of the licensees were subject to the control of the City of Chicago. *Yellow Cab Co. v. City of Chicago*, copy of opinion is appended.

This opinion describes the taxicab history and ordinances of the City of Chicago, and discloses how these ordi-

nances were adapted to the emergencies of changing times and conditions.

The violations of the Sherman Act claimed by the plaintiff are (1) that Yellow and Checker, by asserting their license and priority rights, excluded others from possible participation in the limited number of outstanding licenses; (2) that Yellow and Checker, licensees, will not compete with Parmelee, a non-licensee, for contracts with railroads to transport railroad passengers between Chicago railroad stations, and Parmelee, a non-licensee, will not compete with Yellow or Checker, licensees, for general taxicab business in Chicago; and (3) that CCM acquired stock control of Yellow, Checker and Parmelee with the purpose and result that they purchase their requirements of cabs only from CCM.

ARGUMENT

I

Neither the assertion by Yellow and Checker of the license and priority rights conferred on them by the ordinances of the City of Chicago, even to the exclusion of other potential licensees, nor their operations under such ordinances, constitute a restraint or monopoly under the Sherman Act.

The validity of Yellow and Checker's license and priority rights under the ordinances of the City of Chicago has specifically been established by the mentioned decision on January 22, 1947 of the Supreme Court of Illinois, *Yellow Cab Co.* v. *City of Chicago.*

It is likewise established that the Sherman Act does not operate against any rights or restraints flowing from State or local regulation. *Parker* v. *Brown*, 317 U. S. 341 (1943); *Field* v. *Barber Asphalt Paving Company*, 194 U. S. 618 (1904).

An argument of the plaintiff asserting violations of the Sherman Act derived from the exercise by Yellow and Checker of their license and priority rights or operations under the municipal ordinances raises, therefore, no substantial question.

II

The furnishing of taxicab services in Chicago is not interstate commerce and accordingly is not subject to the Sherman Act.

The complaint alleges that the defendants conspired to restrain and monopolize "interstate trade and commerce" in the business of furnishing cab services for hire in Chicago. In the court below, the plaintiff specifically limited the "interstate commerce" so alleged to "the transportation by cabs of interstate railroad passengers between, to and from railroad stations in Chicago." The plaintiff conceded that the commerce which is the subject of the claimed violations is not interstate railroad transportation; this concession obviously resulted from the utter lack of any suggestion that the defendants had in any respect monopolized or restrained railroad transportation. The plaintiff also conceded in the court below that, disconnected from interstate railroad transportation, the general taxicab business in Chicago is local commerce.

The question thus presented is—Does the defendants' Chicago taxicab business become interstate commerce because, or to the extent that, some of their taxicabs sometimes carry passengers who have been, are, or are about to become interstate railroad passengers?

The nature of the defendants' taxicab services is stated in the opinion of the court below:

> "The following facts either appear in the complaint, are of common knowledge, or have been admitted in

briefs and arguments. A railroad passenger upon his arrival in Chicago may freely choose one of several methods of local transportation whether he be going to another station or to any other point in the city. Such passenger, prior to his arrival, makes no arrangement with any railroad or with anyone else for the hire of a taxicab in Chicago. If, upon arrival, he determines to take a taxicab he makes arrangements for carriage with the taxicab driver and is transported to another point in Chicago or its vicinity. The defendants' taxicabs do not cross state lines. The railroad passenger has control of the taxicab both as to contents, direction and time of use. He pays his taxicab fare to the taxicab driver at a rate fixed by the City of Chicago and the railroads have no control or interest in that fare. The carriage of a railroad passenger by any particular taxicab is casual and incidental and the number of taxicab trips in which interstate railroad passengers are transported is a small part of the total number of taxicab trips in Chicago. Finally, no corporate contractual or other relationship in the nature of integration exists between the railroads and the taxicab companies."

The contention of the plaintiff that the furnishing of such cab services in Chicago is itself interstate commerce raises no substantial question.

The instant case is an *a fortiori* application of the decision of this Court in *New York ex rel. Pennsylvania Railroad Company* v. *Knight*, 192 U. S. 21, 27-28 (1904). In the *Knight* case a taxicab service maintained by the railroad to transport passengers between their homes and hotels in New York City and the railroad terminal, but conducted "wholly within the state" and without "contractual or necessary relation" to the interstate railroad transportation, was held "an independent local service, preliminary or subsequent to any interstate transportation". In *Stafford* v.

Wallace, 258 U. S. 495, 528 (1922), this Court said of the taxicab service in the *Knight* case:

> "This court held that because it was independent of the railroad transportation, and not included in the contract of railroad carriage, it did not come within interstate commerce."

Similarly, in *Swift & Co.* v. *United States*, 196 U. S. 375, 401 (1905), this Court considered the *Knight* case as involving an "independent matter" from railroad transportation. *United States* v. *Capital Transit Company*, 325 U. S. 357 (1945), referred to by the plaintiff, presented a different question. There a bus company maintained local transportation as an integrated part of its District of Columbia-Virginia bus service. Joint fares were prescribed by the Interstate Commerce Commission in connection with the District-Virginia transportation, and discrimination against other District-Virginia bus carriers was prohibited. In the instant case, there is neither connection between the defendant taxicab companies and any railroad, nor discrimination by the defendant taxicab companies against any railroad or railroad passenger.

III

The rendering of different services by Yellow-Checker and Parmelee does not result in a restraint or monopoly under the Sherman Act.

This question does not, of course, even arise if the claimed restraint flows from the ordinances of the City of Chicago (Point I above) or concerns local commerce (Point II above).

The complaint does not charge that the services rendered by Yellow, Checker and Parmelee are inadequate with respect to railroad passengers or discriminatory against them.

The sole charge is that Yellow and Checker will not compete with Parmelee for contracts with railroads to transport railroad passengers between Chicago railroad stations, and that Parmelee will not compete with Yellow or Checker for general taxicab business in Chicago.

This charge has no foundation. The statutes and businesses of Yellow and Checker differ sharply from that of Parmelee. As said by the court below:

> "It is a commonly known fact that the taxicab business is totally different from Parmelee's both from a standpoint of equipment used and services rendered."

Yellow and Checker, as licensees, operate taxicabs for the general Chicago public. They are required by ordinance to carry "every person" to whatever destination he chooses within Chicago. Parmelee holds no licenses from the City of Chicago and does not operate taxicabs for the general Chicago public. It operates limousine-coaches only for railroad passengers and only between railroad stations. This sharp difference in status delineates the difference in business. The duties imposed by ordinance on Yellow and Checker to carry "every person" anywhere within Chicago cannot, as in the case of Parmelee, be restricted by contracts with railroads to the carriage of only railroad passengers only between railroad stations. Conversely, Parmelee, a non-licensee, cannot under the ordinances operate taxicabs for the general Chicago public. Subject, however, to the ordinances and contracts respectively binding them, Yellow, Checker and Parmelee offer their services to all railroad passengers at Chicago railroad stations and, in that respect, do compete.

The claimed restraint raises, therefore no substantial question.

IV

The purchase of cabs by Yellow, Checker and Parmelee exclusively from CCM does not constitute a monopoly or restraint under the Sherman Act.

The plaintiff concedes that CCM has no monopoly of either the manufacture or sale of cabs in the United States. The complaint does not allege any such monopoly; and official government records disclose that in 1942 over fifty thousand licensed taxicabs were in operation in the United States (Accomplishment Report for Year 1942, O.D.T., Division of Local Transport) plus many thousands of unlicensed taxicabs. The vast number of these taxicabs are the products of the major national automobile manufacturers, such as General Motors, Chrysler, Ford and Packard, and only an extremely small fraction of the total were manufactured by CCM. The complaint refers to four cities in which the defendants operate taxicabs. Chicago has already been considered. In New York, of 13,000 taxicab licenses, a subsidiary of Parmelee owns 2,000; in Minneapolis, of 214 taxicab licenses, a subsidiary of Parmelee owns 125. The complaint does not refer to licenses in Pittsburgh, but asserts merely that subsidiaries of Parmelee operate all Pittsburgh taxicabs; the number is not mentioned.

The Illinois Supreme Court said, in *Yellow Cab Company* v. *City of Chicago*, copy of opinion appended

> " . . . Appellees operate only vehicles which have been specially constructed for taxicab service and do not use conventionally designed passenger automobiles. It further appears that appellees have made some effort to obtain standard passenger automobiles to replace their fleets, but that in the opinion of appellees and expert witnesses familiar with the maintenance of taxicab fleets, the use of conventionally designed automobiles would be impractical since it would complicate the maintenance of the taxicab fleets inas-

much as parts of one taxicab would not be interchangeable with other taxicabs and mechanics trained to service one make of vehicle could not satisfactorily and economically repair and service other makes of vehicles. It further appears that there are many individuals in the city of Chicago who have obtained on the open market conventionally designed passenger cars which they have converted to suitable taxicab use. It further appears that there are certain advantages to the operation of taxicabs of special construction since they have many specially designed features for the safety, convenience and enjoyment of the passengers, and for easier operation on the public streets. Certain of these features are extra heavy frames, specially constructed bodies, specially designed brakes and steering mechanism, finger guards on door hinges, specially padded partitions, specially designed wheels, tires, ventilators and other features. Their weight is approximately 1,000 pounds more than the average passenger car."

The violation of the Sherman Act asserted by the plaintiff is only this—that CCM, which is not a monopoly, acquired operating companies as subsidiaries, with the purpose and result that such operating companies purchase their requirements of cabs only from CCM. This charge, it is submitted, presents no substantial question.

The purchase of cabs from CCM by Yellow, Checker and Parmelee does not, of course, preclude any one else who so desires from purchasing CCM manufactured cabs. Exclusive purchases by subsidiaries are charged, but not exclusive sales by the parent.

Business expansion and integration through subsidiaries, affiliates or controlled outlets has long been recognized as lawful. *United States* v. *Winslow*, 227 U. S. 202, 217 (1913); *United States* v. *U. S. Steel Corporation*, 251 U. S. 417 (1920); *United States* v. *Keystone Watch Case Co.*, 218 Fed. 502, 510 (1915); app. dis'd, 257 U. S. 664 (1921); *United*

States v. *Paramount Pictures, Inc.*, 66 F. Supp. 323, 353-354 (1946).

Likewise has it been recognized that sales to and purchases by exclusive agents do not constitute a restraint of trade. *Federal Trade Commission* v. *Curtis Publishing Company*, 260 U. S. 568 (1923); *United States* v. *General Electric Company*, 272 U. S. 476 (1926); *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344 (1933).

The cases referred to by the plaintiff, including *United States* v. *Bausch & Lomb Co.*, 321 U. S. 707 (1944) are totally dissimilar, and relate to resale price-fixing schemes. That is not this case. No resale is made by the operating subsidiaries of the cabs purchased from CCM. Further, the rates for taxicab services are fixed, not by the operating companies, but by the municipality. In fixing such rates the municipality may, of course, consider prices charged for taxicabs throughout the United States by the major national automobile manufacturers who dominate the industry. Indeed, the plaintiff's charge of monopolization or restraint of sales by CCM is an inversion, since CCM is so small a manufacturer in relation to the major national automobile manufacturers.

The plaintiff's charge concerning monopoly or restraint in the sale of cabs by CCM presents, therefore, no substantial question.

Conclusion

The motion to dismiss or affirm should be granted.

Respectfully submitted,

HOWARD ELLIS,
A. L. HODSON,
KIRKLAND, FLEMING, GREEN, MARTIN & ELLIS,
Attorneys for Defendants-Appellees Yellow Cab Company and Chicago Yellow Cab Company, Inc.;

SAMUEL H. KAUFMAN,
KAUFMAN, GALLOP, CLIMENKO,
GOULD & LYNTON,
HAROLD A. SMITH,
CHARLES CALDERINI,
WINSTON, STRAWN & SHAW,
Attorneys for Defendants-Appellees Checker Cab Manufacturing Corporation and Morris Markin;
JULIUS JESMER,
JESMER & JESMER,
Attorneys for Defendants-Appellees Checker Taxi Company and Cab Sales and Parts Corporation;
PHILIP E. RINGER,
RINGER, REINWALD & SOSTRIN,
Attorneys for Defendant-Appellee Parmelee Transportation Company.

APPENDIX

Opinion

SUPREME COURT OF ILLINOIS

UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday the 13th day of January in the year of our Lord, one thousand nine hundred and forty-seven, within and for the State of Illinois.

Present: Walter T. Gunn, Chief Justice; Justice Clyde E. Stone, Justice Loren E. Murphy, Justice William J. Fulton, Justice Francis S. Wilson, Justice June C. Smith, Justice Charles H. Thompson. George F. Barrett, Attorney General. Harry G. Newman, Marshal.

Attest: Earle Benjamin Searcy, Clerk.

Be It Remembered, that afterwards, to-wit, on the 22nd day of January, 1947, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

No. 29686

YELLOW CAB COMPANY, a Corp., et al., Appellees,

vs.

CITY OF CHICAGO, a Municipal Corporation, et al., etc., Appellants.

Appeal from Circuit Court, Cook County

Docket No. 29686—Agenda 28—November, 1946.

Yellow Cab Company *et al.*, Appellees, v. The City of Chicago *et al.*, Appellants.

Mr. JUSTICE FULTON delivered the opinion of the court:

This is an appeal from the action of the circuit court of Cook county, granting to appellees a permanent injunction

restraining appellants from cancelling or causing to be cancelled any taxicab licenses of appellees pursuant to notices given to appellees by the public vehicle license commissioner of the city of Chicago as directed by resolution of the city council of the city of Chicago. Said injunction also restrained appellants from issuing or causing to be issued any permits or licenses pursuant to a resolution, order or ordinance of the city council of the city of Chicago, passed January 16, 1946, and restrained appellants from issuing any permits or licenses in excess of the total number of 3000 without first holding hearings with respect to the public convenience and necessity therefor and without first affording appellees an opportunity to apply for and obtain such licenses to the number thereof provided for in a previous ordinance of the city council, passed on December 22, 1937.

The validity of certain ordinances of the city of Chicago is challenged by the parties in this cause and the trial judge has certified that the public interest requires the appeal be taken directly to this court in view of the questioned validity of these municipal ordinances.

For a proper consideration and determination of the issues in this case it is necessary to review the action of the city of Chicago and of the appellees regarding the operation of taxicabs in that city during the past fifteen years. On May 18, 1934, the city council passed a comprehensive ordinance to regulate the operation of taxicabs in the city of Chicago. This ordinance provided for the issuance of licenses to operate taxicabs in the city for a term ending December 31, 1940, unless sooner terminated or revoked as provided in the ordinance. The ordinance provided for the payment of license fees and the establishment of taxicab rates to be charged uniformly by all taxicabs, limited the number of passengers to be carried in each cab, required the payment of judgments rendered for personal injury, property damage or wrongful death against any licensee, limited the hours of work of each driver and contained other provisions designed for the protection of the citizens of the city of Chicago. The ordinance also contained a provision that no licenses should be subsequently authorized except upon transfer to permit replacement of the taxicabs or in the annual renewal of such licenses unless the commissioner, after a hearing, found that public

convenience and necessity required additional taxicab service. No new licenses could be issued to any licensee unless he accepted this ordinance. This comprehensive ordinance also established a basis for making a determination as to the necessity and public convenience requiring licensing of additional taxicabs and provided that in the event of discontinuation of service of any taxicab excepting on account of strikes, acts of God, or anything beyond the control of the licensee the commissioner might give notice to the licensee to restore such taxicabs to service and the failure to restore such service within five days after notice would give the commissioner the discretion to recommend to the mayor that the license be revoked and the mayor in his discretion might revoke the same. This ordinance provided that it should be in full force and effect from and after its passage, if one or more persons, firms, or corporations operating taxicabs should within 60 days, file with the city clerk formal written acceptance of the same. Both appellees filed acceptances thereof.

Based upon this ordinance, 4108 taxicab licenses were issued in the city of Chicago. The Yellow Cab Company received 2166 licenses and the Checker Taxi Company received 1500 licenses. Subsequent operation of taxicabs in the city of Chicago resulted in unprofitable operations from the standpoint of the drivers and the licensees, resulting in strikes and other violence on the city streets, and in 1937 it was determined that a reduction in the number of taxicabs operated in the city and an increase in the fares charged was in the public convenience and necessity. Thereafter on December 22, 1937, the city council passed an ordinance providing for a method of voluntary surrender by licensees of enough of their licenses to reduce the total from 4108 to 3000. This ordinance provided that in the event the number of authorized licenses should later be increased above the 3000 figure said licenses, to the number surrendered, should first be issued to licensees ratably in proportion to the number voluntarily surrendered by each licensee. The ordinance likewise provided that authority of the licensees to operate taxicabs under the 1934 ordinance be extended to December 31, 1945, provided the licensees accepted the terms of the 1937 ordinance.

The Yellow Cab Company voluntarily surrendered 571 of its licenses and the Checker Taxi Company surrendered 500 of its licenses. Other licensees surrendered the balance of the required reduction. The appellees and other licensees continued to operate under this 1937 ordinance. The evidence shows that in 1940 and in 1941 appellees replaced their taxicab fleets in the city with new equipment, but since that time due to economic restrictions occasioned by World War II they have been unable to obtain new equipment customarily used by them for taxicab purposes. The evidence shows that the average life expectancy of a taxicab in the city of Chicago is about three years and that those operated in the city by appellees at the time of the hearing in this case have exceeded their life expectancy by more than 1½ years.

With the end of the war it was thought that appellees and others would be able to replace their taxicab fleets with new equipment and on June 21, 1945, the city council passed an extension ordinance extending the term of the ordinance of 1937 for five years, ending December 31, 1950. This action of the city council was preceded by pledges made to the city by appellees that they would replace their fleets with new equipment as soon as possible.

On December 28, 1945, the city council passed a resolution reciting that demands for all forms of local transportation had increased on account of World War II and directed the commissioner to enforce the provisions of the 1937 and 1945 ordinances by compelling full operation of 3000 taxicabs in the city by January 15, 1946. In the event that full operation of said taxicabs could not be accomplished, the commissioner was authorized to take steps for licensing additional taxicabs in the city.

On January 16, 1946, the city council passed the following: "ORDERED, That the Public Vehicle License Commissioner be and he is hereby authorized and directed to issue two hundred fifty (250) permits for the operation of taxicabs, and that ex-servicemen be given preference in the issuance of such permits; such permits to be issued only to individuals and to be distributed generally through the city." On January 22, 1946, the commissioner addressed a letter to each of the appellees advising them that

his office had surveyed their records and that the Yellow Cab Company had 234 taxicabs and the Checker Taxi Company had 87 taxicabs which had not been operating. He directed that they be placed in operation within five days or the licenses for said cabs would be cancelled.

Appellee Yellow Cab Company filed its complaint for injunction on January 24, 1946. Subsequently, appellee Checker Taxi Company was given leave to appear as a plaintiff. In their complaints as amended, appellees alleged the existence of the various ordinances and actions by the city council and the public vehicle license commissioner, and in addition, alleged that they had invested several million dollars in taxicab equipment, real estate and property; had acquired contract rights; had complied with all ordinances; had given up licenses under the 1937 ordinance, and had ordered new fleets of taxicabs, relying on their contract rights. They also alleged that the action of the defendants in attempting to cancel their licenses and to issue additional permits, interfered with and violated their contract rights secured to them by the State and Federal constitutions, and would cause irreparable harm, injury and damage to their goodwill, business and investments, and that they had no adequate remedy at law.

The defendants filed a motion to dismiss the complaints and also filed answers to the complaints and amendments thereto. By these pleadings the defendants contended that the complaints were filed prematurely; that no cause of action existed at the time of filing the complaints; that a court of equity had no jurisdiction to restrain a legislative body from exercising its governmental or legislative functions; that the ordinances of 1934, 1937 and 1945, are void; that the city of Chicago does not have authority to prohibit, exclude or limit the number of motor vehicles for hire upon the streets without equal application to all citizens; that said ordinances in effect grant an absolute monopoly denying to all citizens the equal protection of the laws and are contrary to the public policy of the State of Illinois, and constitute class legislation; that said ordinances delegate legislative powers to unnamed individuals to arbitrarily determine if said ordinances would become a law at sometime in the future, and that said ordinances

are *ultra vires*, because the city attempted to part with or abdicate its legislative and governmental powers.

After a hearing, the court enjoined the defendants as above set forth. From the evidence it appears that the appellees are unable to operate 321 taxicabs by reason of their inability to obtain repairs and replacement parts for said vehicles. This inability has been occasioned by the economic restrictions incident to World War II and is beyond the power of appellees to remedy. Appellees operate only vehicles which have been specially constructed for taxicab service and do not use conventionally designed passenger automobiles. It further appears that appellees have made some effort to obtain standard passenger automobiles to replace their fleets, but that in the opinion of appellees and expert witnesses familiar with the maintenance of taxicab fleets, the use of conventionally designed automobiles would be impractical since it would complicate the maintenance of the taxicab fleets inasmuch as parts of one taxicab would not be interchangeable with other taxicabs and mechanics trained to service one make of vehicle could not satisfactorily and economically repair and service other makes of vehicles. It further appears that there are many individuals in the city of Chicago who have obtained on the open market conventionally designed passenger cars which they have converted to suitable taxicab use. It further appears that there are certain advantages to the operation of taxicabs of special construction since they have many specially designed features for the safety, convenience and enjoyment of the passengers, and for easier operation on the public streets. Certain of these features are extra heavy frames, specially constructed bodies, specially designed brakes and steering mechanism, finger guards on door hinges, specially padded partitions, specially designed wheels, tires, ventilators and other features. Their weight is approximately 1000 pounds more than the average passenger car.

The appellants contend in this court that:

1. The trial court has no jurisdiction to enjoin the exercise of the legislative, governmental, and discretionary functions of the city council and public officials.

2. The resolution of the city council requiring 3000 taxicabs be put into service on or before January 15, 1946, is a valid and proper exercise of the legislative function of the city council.

3. The ordinance of January 16, 1946, authorizing and directing the public vehicle license commissioner to issue 250 permits for operation of taxicabs in the city of Chicago is valid and is a proper exercise of the legislative power of the city council.

4. The ordinances of the city of Chicago of May 18, 1934, December 22, 1937, and June 21, 1945, providing for the issuance of licenses and regulation of the taxicab business in the city of Chicago are null and void.

The appellees contend that the action of the trial court should be affirmed for the following reasons:

The inoperability of 321 taxicabs was beyond the control of appellees and, therefore, no action could be taken by appellants toward the cancelling of such licenses.

2. The action of the city council of January 16, 1946, in authorizing and directing the issuance of 250 permits for the operation of taxicabs in the city of Chicago is void because there is no finding that public convenience and necessity required the issuance of additional taxicab licenses; the ordinance is vague and uncertain, it is discriminatory, does not afford appellees the right to apply for permits or licenses in excess of the 3000 as guaranteed by the 1937 ordinance, and it violates and ignores appellees' contract rights secured by the Federal and State constitutions.

3. The ordinances of 1934, 1937 and 1945 are all valid and constitute binding contracts between the city and appellees.

As to the contention that the trial court had no jurisdiction to grant the injunction in this case on the ground that it interfered with the exercising of legislative, governmental and discretionary functions of the city council, we cannot agree. Appellees have not sought to enjoin the city council from acting upon the question of taxicabs and

their regulation. Appellees have merely sought to enjoin the city and its officials from taking action based upon ordinances or resolutions of the city council which appellees contend are invalid. The case of *Fletcher* v. *City of Paris*, 377 Ill. 89, cited by appellants and relied upon heavily by them, is authority for the proposition that equity cannot enjoin the holding of an election for the adoption of an ordinance nor can equity enjoin the passage of legislation, inasmuch as the holding of an election is the exercise of a political right and equity will not interfere in a case affecting the enjoyment of political rights where the holding of an election is a necessary step in the legislative process of adopting and bringing into existence a municipal ordinance. Likewise that case holds that inasmuch as the judiciary has no supervision of the legislative branch of the government, courts will not enjoin the passage of legislation, since the restricting power of courts is against the enforcement rather than the passage of unauthorized orders, resolutions or ordinances of municipal corporations. In the case at bar the injunction does not restrict the city council from enacting such ordinances or resolutions as it might care to regarding the regulation of taxicabs in the city of Chicago. It merely restricts the action of the city and the license commissioner, the city clerk and the mayor from taking certain action in the nature of enforcing ordinances or resolutions previously adopted by the city council.

Appellees in this case could properly maintain this action since they are in immediate danger of sustaining direct injury as a result of the enforcement and carrying out of the resolutions of the city council of December 28, 1945, and January 16, 1946. *Fletcher* v. *City of Paris*, 377 Ill. 89.

We cannot agree with appellants' contention that the city of Chicago cannot limit or restrict the number of taxicabs which are to be operated upon the streets of the city of Chicago. In the case of *People ex rel. Johns* v. *Thompson*, 341 Ill. 166, this court had before it for consideration the validity of an ordinance regulating taxicabs, passed September 25, 1929, which contained provisions similar in many respects to the ordinances of 1934, 1937 and 1945, the validity of which are questioned in this proceeding. In that case we upheld the validity of that ordinance and we

stated, "The ordinanee is not discriminatory on the ground that it singles out taxicabs for regulation and does not apply to private vehicles or other public vehicles drawn by horses. No one has any inherent right to use the streets or highways as a place of business. Where one seeks a special or extraordinary use of the streets or public highways for his private gain, as by the operation of an omnibus, truck, motorbus or the like, the State may regulate such use of the vehicle thereon or may even prohibit such use." We also held in that case that the power of the city to pass the ordinance in question had been authorized under the Cities and Villages Act then in force. We likewise held that the right to regulate includes the right to impose reasonable conditions and restrictions and that the power to regulate the use of streets by vehicles included the power to promote the general welfare and prevent accidents, and that the reasonableness of police regulation is not necessarily what is fairly appropriate under all circumstances. Certainly, the city of Chicago, having the right to regulate traffic and parking, to build bridges, viaducts, tunnels and sewers, to select streets for through or local traffic, to levy a city vehicle tax, to provide for the underground laying of wires or other facilities in the street and to provide for the general policing of the city, could, in the exercise of its powers conferred upon it by the legislature, properly determine the number of taxicabs which it would permit to be operated in the city of Chicago. Any conclusion other than this would render ineffective the authorizations by the legislature to the city for the regulation of traffic and parking and the policing of the city. It is well known and this court takes judicial notice of the facts that there are numerous congested areas in the city of Chicago and that the very nature of the taxicab business contributes to this traffic congestion.

Appellants contend that the ordinances of 1934, 1937 and 1945, providing for the regulation and licensing of taxicabs in the city of Chicago, are invalid since such ordinances create, or attempt to create, a monopoly in the taxicab business in the city of Chicago. A careful study of the record indicates that at the time of the hearing in this cause there were 348 persons, firms or corporations, in-

cluding appellees, holding licenses for the operation of 3000 taxicabs in the city of Chicago. It is true that the vast majority of the 3000 licenses are held by appellees, however no taxi operator and no person who desires to enter the taxicab business has, in this cause, complained of a monopoly. By these ordinances which are said to create a monopoly the city has reserved the right to fix fares and has the right to inspect the books and records of the various licensees. In addition, the city has reserved the right to issue, when authorized by general ordinance, additional licenses for the operation of taxicabs without the consent of any of the licensees. The sole restriction upon the city's right to issue additional licenses is that there shall be a finding of public convenience and necesssity for the additional licenses. In the case of *Capitol Taxicab Co.* v. *Cermak*, 60 F. 2d 608, involving a similar ordinance, the court stated, "To the argument that the ordinance tends to create a monopoly, it is sufficient answer that the city has not by its legislation surrendered its right to grant other and further certificates to all other applicants."

In the case at bar it is contended that the proviso contained in section 2 of the 1937 ordinance restricts the right of the city to issue additional taxicab licenses only to appellees. Section 2 of the ordinance of 1937 provides, "Notwithstanding Section 1 of this ordinance taxicab licenses in excess of 3,000 may be issued when authorized by general ordinance without consent of licensees under the ordinance of May 18, 1934; provided that such licensees who shall have voluntarily surrendered any taxicab licenses or their right to renewal of any taxicab licenses on or before March 31, 1938, shall have the right to such number of taxicab licenses as were so surrendered, and such right shall be prior to the right of any person, firm or corporation until such licensees who have so surrendered their taxicab licenses shall have either released their right to apply for taxicab licenses or shall have failed to make application therefor within thirty (30) days after publication of notice of public hearing upon the question of public convenience and necessity for the issuance of licenses for taxicabs as provided by ordinance."

The ordinance of 1937 was a general ordinance of general application and merely attempted to provide a method for meeting the difficulties incident to the operation of taxicabs resulting from a period of economic depression. This ordinance was passed for the purpose of establishing proper regulation for the taxicab business in the city of Chicago during a critical period. Anyone holding a taxicab license could have surrendered the same and would have been given protection in regaining the license as afforded by this ordinance. It should be borne in mind that at the time the 1937 ordinance was passed, all taxicab licenses in the city of Chicago did not expire until December 31, 1940, and, therefore, the city of Chicago could not legally at that time reduce the number of taxicab licenses in the city by general ordinance. Conditions demanded that the number of licenses be reduced immediately and in order to secure their reduction, this ordinance granting a preference to people who voluntarily surrendered licenses was enacted. The proviso giving to licensees surrendering taxicab licenses the right to regain their licenses, when the city of Chicago determines that additional licenses are to be authorized, merely gives to those people a preference for the period of 30 days after the publication of notice of public hearing upon the question of public convenience and necessity. Should these former licensees fail to apply for licenses within that 30-day period, then any one who desires to engage in the taxicab business can obtain a license providing he meets the general requirements of the ordinance. It is clear that no exclusive right to operate taxicabs has been granted to any person or corporation in expressed terms. The fact that appellees may be the only persons who surrendered taxicab licenses and are, therefore, the only persons entitled to the preference does not render the ordinance void, since the ordinance is of general application and since the preference in obtaining additional licenses is given only for a limited time and is based upon a valuable consideration. The city council of the city of Chicago, in the exercise of its legislative discretion, could well have determined that this ordinance was a proper exercise of its police power for the regulation of the taxicab business and the regulation of the traffic and congestion upon its

streets. It is not the province of this court to inquire as to the wisdom of passing the ordinance. As long as the same does not violate any constitutional limitation, it is a valid enactment, though the court might disagree with the wisdom of its provisions.

Appellants have also contended that the ordinances of 1934, 1937 and 1945 do not constitute contracts between the city and the operators of taxicabs, on the ground that the ordinances only refer a license and do not grant a franchise. A review of the authorities indicates that the distinction between a license and franchise has developed mainly by reason of the difference in the type of business performed. In the case of public utilities, almost without exception, the grant of authority to them to conduct business within the limits of a city is referred to as a franchise. On the other hand, the right of a theater, garage, restaurant, bowling alley and other businesses to engage in business is referred to as a license. Counsel have pointed out in great detail the distinction between franchises and licenses and have based much weight upon the fact that in a franchise the holder thereof can be compelled to operate his business while in the case of a license the licensee cannot be compelled to operate his business against his will. However, a review of the authorities in other States indicates that the terms "license" and "franchise" have been used often synonymously and that each State has a somewhat different meaning for the two terms.

The question to be determined in the case at bar is whether or not a licensing ordinance can constitute a contract between the city and the licensees. It is the opinion of this court that the licensing ordinances in the case at bar did create a contract between the city and the licensees. In the case of *Peoria Railway Co.* v. *Peoria Railway Terminal Co.* 252 Ill. 73, we held that the privilege to use the streets of a city having been granted by an ordinance was not recoverable at the will of the city after it had been accepted by the licensee. We also held that where the license had been acted upon in a substantial manner and the revocation thereof would be inequitable, the same could not be revoked. This court in the case of *American Can Co.* v. *Emerson*, 288 Ill. 289, held that a license granted

to a foreign corporation to do business in the State of Illinois constitutes a contract between the foreign corporation and the State of Illinois. It being the opinion of this court that the ordinances granting licenses to appellees and others operating taxicabs in the city of Chicago constitute a valid contract between appellees and the city of Chicago, and it being the opinion of the court that such ordinances are not illegal as being beyond the power of the city to enact, we pass to the question of the delegation of power under the ordinances and we find that the delegation of power to the commissioner herein is not illegal. In the case of *People* v. *Thompson*, 341 Ill. 166, we considered the delegation of power under a similar ordinance regulating taxicabs in the city of Chicago and held that such delegation was proper. The only material difference between the provisions of the ordinance there questioned and the ordinances here, as to the delegation of power, is that in that case the power was given to a commission. We do not regard this difference as being material, inasmuch as proper standards for the action of the commissioner have been established by the ordinances.

Appellants have also contended that the action of the chancellor in holding invalid the order of the city council of January 16, 1946, authorizing the issuance of 250 taxicabs "permits," should be reversed. It is the opinion of this court that this action of the chancellor should likewise be affirmed. In view of the previous finding by the city that public convenience and necessity required the operation of 3000 taxicabs in the city of Chicago, and in view of appellees' admitted inability to keep all of their taxicabs in operation, due to conditions beyond their control, the city could properly provide for the issuance of temporary permits during a critical period when it was impossible to keep in operation all of the taxicabs theretofore licensed. However, the operation of such additional taxicabs authorized by the city council to bring the total number of cabs in operation to the necessary 3000 should be subject to the conditions of the general ordinance regulating the taxicab business in the city of Chicago. Certainly, the temporary permittees should be compelled to charge the same fares, submit to the same regulation and abide by the same safety

precautions as provided in the general ordinance. The action of the city council of January 16, 1946, does not in any way attempt to bring the temporary permittees under the same regulation as other taxicabs operating in Chicago, nor does this action provide for a termination of these permits when taxicab licensees are able to furnish the service which public convenience and necessity requires. The chancellor properly held this action of the city council invalid.

Appellees have raised many other arguments as to the validity and the propriety of the chancellor's action, which have received careful consideration, but, in view of our decision on the points heretofore discussed, it would serve no useful purpose to further lengthen this opinion by a piecemeal discussion thereof. For the reasons which we have heretofore stated, the decree of the circuit court of Cook county is affirmed.

Decree affirmed.

FILE COPY

No. 1035

IN THE

Supreme Court of the United States

October Term, 1946

THE UNITED STATES OF AMERICA, APPELLANT

v.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, et al.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR APPELLEES AND APPENDICES

INDEX

	PAGE
Opinion Below	1
Jurisdiction	1
Statute Involved	2
Questions Presented	2
Statement	3
Summary of Argument	6
Argument	9
I—The operating companies' exclusive purchases of taxicabs from CCM do not violate the Sherman Act	9
II—Yellow and Cab Sales are not required to compete with Parmelee for contracts with railroads	17
III—Neither the assertion by Yellow and Checker of their license and priority rights, nor the taxicab operations conducted by Yellow and Cab Sales in the City of Chicago violates the Sherman Act	20
Conclusion	27
Appendix A	i
Appendix B	iv
Appendix C	xii
Appendix D	xv
Appendix E	xvi
Appendix F	xxxi

Cases Cited

PAGE

Adam v. Saenger, 303 U. S. 59, 63 5
Alexander Milburn Co. v. Union Carbide & Carbon Corp., 15 F. (2d) 678 (C. C. A. 4), certiorari denied 273 U. S. 757 20
Apex Hosiery Co. v. Leader, 310 U. S. 469, 500-501..12, 15
Appalachian Coals, Inc. v. United States, 288 U. S. 344 11
Associated Press v. United States, 326 U. S. 1, 14-15 11
Black and White Taxicab and Transfer Company v. Brown and Yellow Taxicab and Transfer Company, 276 U. S. 518 19
Chicago, Burlington & Quincy R. R. v. Harrington, 241 U. S. 177, 180 25
Coca Cola Bottling Co. v. Coca Cola, 269 Fed. 769 (D. Del.) 11
Delaware, Lackawanna & Western Railroad Company v. Morristown, 276 U. S. 182 19
Donovan v. Pennsylvania Company, 199 U. S. 279 .. 19
Eastern States Lumber Dealers' Assn. v. U. S., 234 U. S. 600, 611 17
Ethyl Gasoline Corp. v. United States, 309 U. S. 436, 458 12
Fashion Originators' Guild, Inc. v. Fed. Trade Comm., 312 U. S. 457 17
Fed. Trade Comm. v. Bunte Brothers, Inc., 312 U. S. 349, 353 27
Fed. Trade Comm. v. Curtis Publ. Co., 260 U. S. 568 11
Fed. Trade Comm. v. Gretz, 253 U. S. 421, 428 12
Field v. Barber Asphalt Paving Company, 194 U. S. 618 .....15, 22

PAGE

Glenn Coal Co. v. Dickinson Fuel Company, 72 F. (2d) 885, 889 13

International Shoe Co. v. Fed. Trade Comm., 280 U. S. 291, 298 13

Kirschbaum Co. v. Walling, 316 U. S. 517, 521 27

Montague & Co. v. Lowry, 193 U. S. 38 17

New York ex rel. Pennsylvania Railroad Company v. Knight, 192 U. S. 21 .....9, 25, 26

Parker v. Brown, 317 U. S. 341 .....15, 16, 21

Pearsall Butter Co. v. Fed. Trade Comm., 292 Fed. 720 (C. C. A. 7) 13

People v. City of Chicago, 349 Ill. 304, 326, 182 N. E. 419 15

People v. Thompson, 341 Ill. 166 15

Shanks v. Delaware, Lackawanna and Western R. R., 239 U. S. 556, 558 25

Stafford v. Wallace, 258 U. S. 495, 528 26

Standard Oil Company (Indiana) v. United States, 283 U. S. 163, 176, 179 17

Standard Sanitary Mfg. Co. v. United States, 226 U. S. 20, 48-49 17

Swift and Company v. United States, 196 U. S. 375, 398 .....25, 26

United Mine Workers of America v. Coronado Coal Company, 259 U. S. 344, 412 13

United States v. Aluminum Co. of America, 148 F. (2d) 416, 424 (C. C. A. 2) 17

United States v. Associated Press, 52 F. Supp. 362, 369 (S. D. N. Y.), affirmed 326 U. S. 1 .....12, 13

United States v. Bausch & Lomb Co., 321 U. S. 707, 728-729 11

PAGE

United States v. Capital Transit Company, 325 U. S. 357 26
United States v. Crescent Amusement Co., 323 U. S. 173 17
United States v. Great Atlantic & Pacific Tea Co., 57 F. Supp. 626, 642 (E. D. Ill.) 11
United States v. Keystone Watch Case Co., 218 Fed. 502, 510 (E. D. Pa.), appeal dismissed, 257 U. S. 664 11
United States v. Klearflax Linen Looms, Inc., 63 F. Supp. 32 (D. Minn.) 15
United States v. Paramount Pictures, Inc., 66 F. Supp. 323 (S. D. N. Y.) 11
United States v. Republic Steel Corp., 11 F. Supp. 117 (D. Ohio) 13
United States v. United Shoe Machinery Co., 247 U. S. 32 19
United States v. U. S. Steel Corp., 251 U. S. 417 ..11, 17
United States v. Winslow, 227 U. S. 202, 217 11

V. Vivaudou, Inc. v. Fed. Trade Comm., 54 F. (2d) 273 (C. C. A. 2) 13

Yellow Cab Co. v. City of Chicago, 71 N. E. 2d 652 .....5, 8, 9, 15, 20, 23

STATUTES

	PAGE
Act of July 2, 1890, 26 Stat. 209 (Sherman Act):	
Section 1 (as amended by the Act of August 17, 1937, 50 Stat. 693)	2
Section 2	2
Act of February 11, 1903, 32 Stat. 823, 15 U. S. C. 29, Section 2	1
Administrative Code of the City of New York (Chapter 929, Laws of 1937, Sec. 436-2.07	16
Bus and Taxicab Regulations issued by the Pennsylvania Public Utility Commission, effective April 15, 1946	16
Clayton Act, Section 3	17
Clayton Act, Section 7	13
Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 936, 938, 28 U. S. C. 345, Section 238	1
Ordinances of the City of Chicago:	
Ordinance of September 25, 1929 (Mun. Code of Chicago (1931 ed.) Chap. 41)	4, 14, 16
Ordinance of May 18, 1934 (Mun. Code of Chicago, Chap. 195A)	4, 14, 16, 18, 23
Ordinance of December 22, 1937 (Mun. Code of Chicago, Chap. 196A)	4, 5
Ordinance of June 26, 1945 (Mun. Code of Chicago, Chap. 196A)	4
Ordinance of the City of Minneapolis, Minnesota, approved March 28, 1947	16
Public Utility Law of Pennsylvania, approved May 28, 1937, as amended	16
Smith-Hurd Ill. Ann. Stats., Ch. 24, Secs. 23-8, 23-10, 23-27, 23-51, 23-78	15
Smith-Hurd, Ill. Ann. Stats., Ch. 51, Secs. 48 (a) and (b)	5
Rules of Civil Procedure, Rule 43 (a)	5

AUTHORITY

Accomplishment Report for year 1942, ODT, Division of Local Transport	13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 1035

THE UNITED STATES OF AMERICA, APPELLANT

v.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, et al.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR APPELLEES

Opinion below

The opinion of the District Court for the Northern District of Illinois (R. 21) is reported in 69 F. Supp. 170.

Jurisdiction

The judgment of the district court dismissing the complaint was entered on December 2, 1946 (R. 27). Petition for appeal was filed and allowed on January 27, 1947 (R. 28, 30). The jurisdiction of this Court is conferred by Section 2 of the Act of February 11, 1903, 32 Stat. 823, 15 U. S. C. 29, and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 936, 938, 28 U. S. C. 345. On February 11, 1947, the defendants filed

a motion to dismiss or affirm under Rules 12(3) and 7(4) of this Court. No decision was rendered on that motion. Probable jurisdiction was noted on March 17, 1947 (R. 34).

Statute Involved

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, provides in part as follows:

> Section 1, (as amended by the Act of August 17, 1937, 50 Stat. 693). Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * * (15 U. S. C. 1.)
>
> Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *. (15 U. S. C. 2.)

Questions Presented

1. Whether exclusive purchases of taxicabs from a non-monopolist manufacturer by its affiliated operating companies (which are subject to municipal regulation, and some of which were acquired to effect such exclusive purchases) violate the Sherman Act because, as a result, other manufacturers are excluded from the opportunity of selling taxicabs to the operating companies.

2. Whether licensed taxicab operating companies which are precluded by municipal regulation from engaging in a restricted inter-station transportation service pursuant to contracts with railroads, and which have never engaged or contemplated engaging in such restricted inter-station transportation, are required to change the character of

their business so as to compete with an affiliate which is engaged in such restricted business.

3. (a) Whether the assertion by taxicab operating companies of valid license and priority rights violates the Sherman Act because, as a result, others are excluded from possible participation in the limited number of outstanding licenses.

(b) Whether the municipally licensed, public taxicab services in the City of Chicago constitute interstate commerce merely because such taxicabs sometimes carry persons who have been or are about to become interstate railroad passengers.

Statement

The complaint charges that the defendants have conspired to restrain and monopolize interstate trade and commerce (a) in the sale of motor vehicles for use as cabs to the principal cab operating companies in Chicago, Pittsburgh, New York and Minneapolis, and (b) in the business of furnishing cab services for hire in Chicago (R. 7).

The defendants moved in the District Court, under Rule 12(b) of the Rules of Civil Procedure, to dismiss the complaint for failure to state a claim upon which relief might be granted, and, alternatively, for partial judgment dismissing such part of the claim as was based on the furnishing of cab services for hire in Chicago (R. 19-20). The District Court granted the motion in its entirety (R. 27).

Yellow* operates taxicabs in Chicago, pursuant to licenses issued to it by the City of Chicago, and Cab Sales operates

---

* The designations of the defendants in the brief for the United States are used in this brief.

taxicabs in Chicago, pursuant to licenses issued to Checker by the City of Chicago and leased by Checker to Cab Sales (R. 6). Parmelee operates unlicensed "cabs"* in Chicago which transport railroad passengers between Chicago railroad stations pursuant to contracts with railroads, and also owns subsidiaries which operate or manage the operations of a number of taxicabs in New York, Pittsburgh and Minneapolis (R. 6-7). CCM manufactures taxicabs in Michigan and sells them (R. 4). Markin is the president of CCM (R. 3). Yellow, Cab Sales, CCM, Checker and Parmelee are alleged to be subject to common stock control (R. 2-3), and, for the purposes of this appeal only, this is conceded. Markin and Cab Sales so control CCM and Checker (R. 3)**; CCM so controls Parmelee (R. 2); and Parmelee so controls Yellow and the New York, Pittsburgh and Minneapolis subsidiaries (R. 2).

The operations of taxicabs in Chicago are comprehensively regulated by ordinances of the City of Chicago (Ordinance of September 25, 1929 (Mun. Code of Chicago (1931 ed.) Chap. 41); Ordinance of May 18, 1934 (Mun. Code of Chicago, Chap. 195A); Ordinance of December 22, 1937 (Mun. Code of Chicago, Chap. 196A); Ordinance of June 26, 1945 (Mun. Code of Chicago, Chap. 196A)).

These ordinances place limitations on the number of taxicab licenses which may be issued (subject to increases, on showing of public convenience and necessity); establish rates and standards of service; and otherwise provide for

---

* These "cabs" are actually limousine-coaches carrying 7 and 10 passengers; were so referred to by both sides on the argument before the District Court; and the District Court in effect judicially noticed the fact by stating that the Yellow & Cab Sales "taxicab business was totally different, from Parmelee's both from a standpoint of equipment used and * * *" (R. 27).

** Checker is presently controlled by existing or former officers or directors of CCM and Cab Sales (R. 3).

detailed regulation. Their text is included as Appendices to this brief.*

The 1937 ordinance, subsequently extended in 1945, reduced the number of outstanding taxicab licenses to 3,000 through voluntary surrenders by licensees; and granted the surrendering licensees a prior right to new licenses, on any subsequent increase, equal to the number of licenses surrendered by them (R. 5-6).

Yellow presently owns 1,595 Chicago licenses and has priority rights to 571 new licenses. Checker presently owns 1,000 Chicago licenses and has priority rights to 500 new licenses (R. 6, 15).

On January 22, 1947, the Supreme Court of Illinois, affirming a decision of the Illinois Circuit Court rendered February 5, 1946,** held that the mentioned ordinances, and Yellow and Checker's license and priority rights under such ordinances, were valid; and that no monopoly existed, since the number of licenses and the rights of the licensees were subject to the control of the City of Chicago. *Yellow Cab Co.* v. *City of Chicago,* 71 N. E. 2d 652. These opinions (which are included as Appendices E and F to this brief) describe the taxicab history and ordinances of the City of Chicago, and disclose the manner in which the ordinances were adapted, from time to time, to the exigencies of changing conditions.

The violations of the Sherman Act claimed by the plaintiff on this appeal are (1) that CCM and Markin acquired control of Yellow, Cab Sales and, through Parmelee, the

---

* See Appendices A to D, inclusive. These ordinances are referred to in the complaint (R. 5-6). Their text was submitted to the District Court as an appendix to defendants' brief; was judicially noticed by the District Court (R. 25); and is considered by the plaintiff to be before this Court (Plaintiff's Brief, p. 10). Judicial notice of these ordinances was appropriate under the pertinent statute and rule (*Smith-Hurd,* Ill. Ann. Stats., Ch. 51, Secs. 48(a)(b); Rule 43(a) of Rules of Civil Procedure); and is accordingly appropriate on this appeal (*Adam* v. *Saenger,* 303 U. S. 59, 63).

** It is to this lower court decision that the complaint refers (R. 6).

New York, Pittsburgh and Minneapolis subsidiaries, with the purpose and result that they purchase their requirements of cabs only from CCM, (2) that Yellow and Cab Sales, licensed operators, will not compete with Parmelee, a non-licensed operator, for contracts with railroads to transport railroad passengers between Chicago railroad stations, and (3) that Yellow and Checker, by asserting their license and priority rights, exclude others from possible participation in the limited number of outstanding licenses. Certain other claimed violations asserted by the plaintiff in the complaint and before the District Court have been abandoned in its brief before this Court, and, accordingly, are not treated in this brief.

Although the allegations of the complaint are discursive, the thrust of the complaint and of the plaintiff's argument before the District Court was directed against the license and priority rights issued to Yellow and Checker by the City of Chicago. The plaintiff's argument before this Court represents a departure from its argument in the District Court, which in part will be adverted to below.

Summary of Argument

I

Although the complaint does not allege interstate sales of taxicabs by manufacturers other than CCM, the plaintiff argues that a violation of the Sherman Act occurs because, as a result of exclusive purchases of taxicabs by the operating companies from CCM, manufacturers other than CCM are excluded from the opportunity of selling their taxicabs to the operating companies. Exclusive dealing arrangements, however, do not *per se* violate the Sherman Act. They conflict with the Sherman Act only when they are "unreasonable" or cause "an injury to the public". The test of reasonableness and public injury equally applies to the acquisition of subsidiaries or affiliates for the purpose of effecting such exclusive deal-

ing arrangements. In the instant case, the only substantial impact of the operating companies' exclusive purchases of taxicabs from CCM is the use of such taxicabs in the localities which the operating companies serve. This use is, however, subject to the local regulatory control of the City of Chicago and the other cities mentioned in the complaint. Local control has been exercised by the City of Chicago by ordinances of comprehensive scope, which regulate the physical requirements of taxicabs and establish the rates charged to the public for their use. This control by the City of Chicago precludes any public injury from exclusive purchases of taxicabs, and CCM concededly is not a national monopolist but an extremely small manufacturer. The power of the City of Chicago to control the use of its streets and the operation of taxicabs on them is similar to its power to grant franchises to public service enterprises. The Sherman Act does not operate against rights or restraints flowing from such municipal control. The issuance, reissuance and extension of the licenses issued by the City of Chicago to Yellow and Checker constitute in effect a local legislative reaffirmation of the propriety of the exercise of such licenses by Yellow and Checker. In New York, Pittsburgh, and Minneapolis, similar licensing conditions prevail, besides which the defendants' operations in those cities do not achieve the percentages or numbers required to constitute monopolization.

II

The plaintiff's claim that the Sherman Act has been violated because Yellow and Cab Sales will not compete with Parmelee for contracts with railroads to transport passengers between Chicago railroad stations, breaks against the ordinances of the City of Chicago. Yellow and Cab Sales operate their taxicabs as licensees of the City of Chicago. They are required by ordinance to carry "every person" to whatever destination he chooses within Chicago. Parmelee holds no licenses from the City of Chicago and operates limousine-coaches only for railroad passengers

and only between railroad stations. The duties imposed by ordinance on Yellow and Cab Sales to carry "every person" anywhere within Chicago cannot, as in the case of Parmelee, be restricted by contracts with railroads to the carriage of only railroad passengers only between railroad stations. Subject, however, to the ordinances binding them, Yellow and Cab Sales do offer their services to all railroad passengers at Chicago railroad stations, and, therefore, in that respect, do compete with Parmelee. The plaintiff's argument that, although the services of Yellow and Cab Sales are distinct from those of Parmelee, Yellow and Cab Sales are nevertheless natural potential competitors for railroad contracts, is purely conjectural. There is no suggestion anywhere in the complaint that Yellow or Cab Sales (or their predecessors) ever had or ever contemplated obtaining contracts with railroads; and particularly absent from the complaint is any suggestion that competition actually threatened was forestalled. Yellow and Cab Sales are not required to change the character of their business so as to compete with Parmelee, their affiliate.

III

The validity of Yellow and Checker's license and priority rights under the ordinances of the City of Chicago has specifically been established by the Supreme Court of Illinois in *Yellow Cab Co.* v. *City of Chicago*, 71 N. E. 2d 652. The license rights of Yellow and Checker derive from these ordinances; and any exclusion of other potential licensees, resulting from the assertion by Yellow and Checker of their license and priority rights accordingly flows from these ordinances. The Sherman Act, however, does not operate against any rights or restraints flowing from state or local regulation. The plaintiff's contention that it does not attack the right of the City of Chicago to issue taxicab licenses but seeks only to preclude Yellow and Checker from exercising their rights under such licenses is merely an argument for the accomplishment indirectly of a result which concededly cannot be accomplished directly. More-

over, the license rights of Yellow and Checker which the plaintiff seeks to abrogate are the very rights which the Supreme Court of Illinois specifically has sustained. *Yellow Cab Co.* v. *City of Chicago*, 71 N. E. 2d 852.

The Chicago taxicab operations of Yellow and Cab Sales do not become interstate commerce because some of their taxicabs sometimes carry passengers who have been or are about to become interstate railroad passengers. The ordinances of the City of Chicago localize these taxicab operations, require the taxicabs to serve the general Chicago public, and preclude any contract or integration with railroads. Under *New York ex rel. Pennsylvania Railroad Company* v. *Knight*, 192 U. S. 21, the taxicab services of Yellow and Cab Sales are "an independent local service, preliminary or subsequent to any interstate transportation." Since the taxicab operations of Yellow and Cab Sales are not themselves interstate commerce, no question of monopolization or restraint of these local taxicab operations arises under the Sherman Act; and further, no charge is made in the complaint that such services are inadequate with respect to railroad passengers or discriminatory against them.

ARGUMENT

I

The operating companies' exclusive purchases of taxicabs from CCM do not violate the Sherman Act.

The charge of the complaint is that the operating companies will buy their taxicabs only from CCM. The complaint alleges:

> "That each such operating company will purchase and use as cabs only motor vehicles manufactured by CCM; and will not purchase for such use, or use, any motor vehicles made by other cab or automobile manufacturers" (par. 19(b), R. 8).

Although the operating companies allegedly will buy their taxicabs only from CCM, the complaint does not allege that CCM will not sell taxicabs to others. Exclusive purchases are therefore charged, but not exclusive sales.

The plaintiff claims that the interstate commerce which such exclusive purchases restrain, in violation of the Sherman Act, is the sales of taxicabs by manufacturers *other than CCM*, who are thereby excluded from the opportunity of selling their taxicabs to the operating companies.

Two preliminary observations are pertinent. First. The "Nature of the Trade and Commerce Involved", alleged in Part III of the complaint does not refer to sales of manufacturers other than CCM (R. 3-4); the only sales to which Part III refers are the sales of CCM (Par. 7, R. 4). Part V of the complaint, "Offenses Charged", does allege that the operating companies "will not purchase for such use, or use, any motor vehicles made by other cab or automobile manufacturers" (par. 19 (b), R. 8); and Part VI mentions, as one of the claimed "Effects of the Conspiracy", that "other manufacturers of motor vehicles capable of use as cabs have been excluded from the opportunity of competing for" sales to the operating companies (par. 53 (3), R. 17): These references to other manufacturers do not, however, define the commerce claimed by the complaint to be restrained; indeed no allegation is contained anywhere in the complaint that such sales of the other manufacturers are interstate. Whatever the common knowledge may be of interstate sales of motor vehicles, the point of importance is that the complaint is not based on interstate sales by other manufacturers; its attack is centered on the operations of the operating companies, with some attempted linkage to the interstate sales of CCM. Second. The plaintiff's brief (pp. 27-31) makes separate arguments as to "sales" by manufac-

turers to the operating companies and "purchases" by the operating companies from manufacturers. Analytically, however, these are not separate matters, but are only different methods of statement that manufacturers other than CCM are, as a result of the exclusive purchase arrangement between the operating companies and CCM, excluded from selling taxicabs to the operating companies.

Assuming, however, without conceding, that the allegations of the complaint extend to interstate sales of manufacturers other than CCM, the question posed is whether the exclusive purchase arrangement between the operating companies and CCM violates the Sherman Act because it results in an exclusion of other manufacturers from sales to the operating companies.

Exclusive dealing arrangements are not precluded *per se* by the Sherman Act. *Fed. Trade Comm.* v. *Curtis Publ. Co.*, 260 U. S. 568; *United States* v. *Bausch & Lomb Co.*, 321 U. S. 707, 728-729; *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344. See *Associated Press* v. *United States*, 326 U. S. 1, 14-15.

Nor are exclusive dealing arrangements, which are necessarily implied among parent-subsidiaries or affiliates in a vertically integrated enterprise, violations *per se* of the Sherman Act. *United States* v. *Winslow*, 227 U. S. 202, 217; *United States* v. *U. S. Steel Corp.*, 251 U. S. 417.

Such exclusive dealing arrangements are readily inferable among the components of the whole in an expanding integrated enterprise, but of course do not constitute violations *per se* of the Sherman Act. *United States* v. *Keystone Watch Case Co.*, 218 Fed. 502 510 (E. D. Pa.) appeal dismissed, 257 U. S. 664; *United States* v. *Great Atlantic & Pacific Tea Co.*, 57 F. Supp. 626, 642 (E. D. Ill.); *Coca Cola Bottling Co.* v. *Coca Cola*, 269 Fed. 769 (D. Del.).

In *United States* v. *Paramount Pictures, Inc.*, 66 F. Supp. 323 (S. D. N. Y.), now pending before this Court on ap-

peals by all parties, the major national motion picture companies required their subsidiaries, which owned 3,000 out of 18,000 theatres in the United States, to exhibit the pictures which the national motion picture companies produced. The Expediting Court (Judges A. N. Hand, Goddard and Bright) held that this did not violate the Sherman Act, notwithstanding that in some cities, including Philadelphia and Cincinnati, all first-run theatres were owned by such subsidiaries. Judge Hand wrote for the Expediting Court:

> "The only pictures that the present sole exhibitors in such localities could control would be their own, which they can always exhibit freely in their own theatres" (p. 354).

Exclusive dealing arrangements conflict with the Sherman Act only when they are "unreasonable" or when "an injury has been done to the public". *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 500-501; *Ethyl Gasoline Corp.* v. *United States*, 309 U. S. 436, 458. Cf. *Fed. Trade Comm.* v. *Gretz*, 253 U. S. 421, 428; see *United States* v. *Associated Press*, 326 U. S. 1, 14, 23, 27. In the *Associated Press* case, Judge Learned Hand wrote for the Expediting Court (52 F. Supp. 362, 369 (S. D. N. Y.), affirmed by this Court (326 U. S. 1):

> "When a situation does not fall within one of [categories earlier described by Judge Hand] a court is forced to weigh the advantages gained by the combination against the injury done to the public, and apparently in this connection the public is the 'purchasers or consumers' whom the combination will deprive 'of the advantages which they derive from free competition'."

This test of reasonableness or public injury likewise prevails in the case of the acquisition by one corporation of the stock of another for the expressed or implied purpose of effecting an exclusive arrangement between the

acquired and the acquiring corporation. Compare, for example, the cases under Section 7 of the Clayton Act. *International Shoe Co.* v. *Fed. Trade Comm.*, 280 U. S. 291, 298; *V. Vivaudou Inc.* v. *Fed. Trade Comm.*, 54 F. (2d) 273 (C. C. A. 2); *United States* v. *Republic Steel Corp.*, 11 F. Supp. 117 (D. Ohio).

The only substantial impact of the operating companies' exclusive purchases of taxicabs from CCM is the use of such taxicabs in the localities served by the operating companies.* The exclusion of other manufacturers from sales of "motor vehicles for use as cabs" in such localities (as a result of the operating companies' exclusive purchases from CCM) is an unsubstantial and incidental impact, since this manufacturing industry is national in scope and CCM is not a national monopoly. The volume of "interstate" sales must, from the manufacturers' standpoint, be viewed nationally since their sales are national. The operating companies' exclusive purchases from CCM are negligible in comparison with the total national sales of all manufacturers, and "it is not reasonable to infer that the public interest has been appreciably affected" by such exclusive purchases. *United Mine Workers of America* v. *Coronado Coal Company*, 259 U. S. 344, 412; *Glenn Coal Co.* v. *Dickinson Fuel Company*, 72 F. (2d) 885, 889 (C. C. A. 4); *Pearsall Butter Co.* v. *Fed. Trade Comm.*, 292 Fed. 720 (C. C. A. 7). The complaint does not allege that CCM is a national monopoly, and the plaintiff so concedes in this Court (Pltff's. Br. p. 21), as in the District Court.** Indeed, as a matter of common knowledge,*** it is an extremely small manufacturer in relation to the major motor vehicle manufacturers.

---

* Compare the quotation on the preceding page, from Judge Hand's opinion in the *Associated Press* case.

** The plaintiff's brief in the District Court stated: "The complaint does not charge CCM with a monopoly of either the manufacture or sale of all cabs throughout the United States."

*** See also Accomplishment Report for year 1942, ODT, Division of Local Transport.

The substantial impact on the public in the localities which the operating companies serve, occasioned by the operating companies' exclusive purchases from CCM, is not the purchase but the use of such taxicabs. It is not the purchase because such taxicabs are not bought for resale; it is the use, since the operating companies' use of the taxicabs constitutes the service to the public.

This use is, however, subject to the local regulatory control of the City of Chicago. (The other cities mentioned in the complaint are considered at pages 16-17 below.) That local control has been exercised by a series of comprehensive ordinances, the scope of which has been indicated in the statement above (pp. 3-6). These ordinances control the physical requirements of taxicabs, as, for example, "the number, kind, type of equipment * * * the color scheme"* "the color scheme and character of equipment",** "physical and mechanical standards for taxicabs and their appurtenances",*** They also control and establish the rates.****

This comprehensive control by the City of Chicago precludes any public injury from any exclusive purchases of cabs by the operating companies from CCM. The quality of taxicabs used by the operating companies is subject to comparison by the City of Chicago with that of taxicabs used elsewhere in the United States. Similarly, in the establishment by the City of Chicago of rates for taxicab

---

* Paragraph 2 of Ordinance of September 25, 1929, Appendix A.

** Section 6 (6) of Ordinance of May 18, 1934, Appendix B.

*** Section 12 (c) idem.

**** Section 4 of the Ordinance of May 18, 1934, Appendix B, provides:

"The council from time to time may establish by a general ordinance just and reasonable rates and charges uniform as to all taxicabs operated within the city. * * *

"* * * * until such time as the council shall establish by a general ordinance other rates and charges for the transportation of passengers and their baggage by taxicabs, the licensee agrees to abide by the following schedule of rates and charges, which is hereby declared to be just and reasonable." (Then follow specified rates and charges.)

service, the price of such taxicabs may be compared with the price of taxicabs produced by other manufacturers throughout the United States. Contrast *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 500-501.

Only if CCM were a national monopoly could it circumvent the regulatory control of the City of Chicago. If CCM were a national monopoly, it could, by possibility, exert the force of such national monopolization to preclude the physical, price and other comparisons by the City of Chicago. (Compare *United States* v. *Klearflax Linen Looms, Inc.*, 63 F. Supp. 32 (D. Minn.)). But that is not this case. CCM is concededly not a national monopoly, but an extremely small manufacturer in relation to the major automobile manufacturers.

The City of Chicago has the power, delegated to it by the State of Illinois, to license and control the use of its streets and the operation of taxicabs on them.* This local power is similar to the local power to grant franchises, including exclusive franchises, to public and quasi-public service enterprises such as street railways, buses, telephones, water works, ferries, and toll bridges.** The City of Chicago might under such power grant an exclusive franchise to operate taxicabs to a single cab manufacturing company; and in such case the Sherman Act would not apply, since any rights and restraints arising from such exclusive franchise would flow from local regulation. *Parker* v. *Brown*, 317 U. S. 341; *Field* v. *Barber Asphalt Paving Company*, 194 U. S. 618. In the instant case, the taxicab licenses of the City of Chicago to Yellow and Checker were issued and reissued on the basis of the comprehensive disclosures and investigations required by the

---

* *Smith-Hurd* Ill. Ann. Stats., Ch. 24, Secs. 23-8, 23-10, 23-27, 23-51, 23-78; *People* v. *Thompson*, 341 Ill. 166; *Yellow Cab Co.* v. *City of Chicago*, 71 N. E. 2d 652 (Appendix E).

** *People* v. *City of Chicago*, 349 Ill. 304, 326, 182 N. E. 419.

ordinances.* These licenses were issued in 1929, with provision for annual renewal; were reissued in 1934 for the period through 1940; were extended in 1937 for the period through 1945; and were again extended in 1945 for the period through 1950. This issuance, reissuance and extension of licenses to Yellow and Checker constitutes in effect a local legislative reaffirmation of the propriety of their exercise by Yellow and Checker, notwithstanding the common ownership alleged in the complaint.

The purchase and use of taxicabs in Chicago is, therefore, a local matter "which may appropriately be regulated in the interests of the safety, health and well being of local communities, and which because of its local character, and the practical difficulties involved, may never be adequately dealt with by Congress", and "because of its local character also there may be wide scope for local regulation without substantially impairing the national interest in the regulation of commerce by a single authority and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the Commerce Clause" (*Parker* v. *Brown*, 317 U. S. 341, 362).

While Chicago is the focal center of the plaintiff's attack, similar licensing conditions prevail in the other cities mentioned, New York, Pittsburgh and Minneapolis.** Concerning those cities, it should be observed that in New York only 2,000 licenses, out of 13,000 outstanding licenses, are held by a controlled operating company (R. 7); that the number of taxicabs in Pittsburgh is not mentioned in the complaint; and that the controlled operating company in Minneapolis, which owns only 125 taxicabs, was not acquired, but was organized by Parmelee (R. 9). Even

* Paragraph 3 of Ordinance of September 25, 1929, Appendix A; Section 8-10 of Ordinance of May 18, 1934, Appendix B.

** Administrative Code of the City of New York (Chapter 929, Laws of 1937, Sec. 436-2.0; Ordinance of the City of Minneapolis, Minnesota, approved March 28, 1947; Public Utility Law of Pennsylvania, approved May 28, 1937, as amended; Bus and Taxicab Regulations issued by the Pennsylvania Public Utility Commission, effective April 15, 1946.

aside from the regulatory licensing conditions applicable in these cities, comparable to those in Chicago which have already been discussed, the defendants' operations in New York, Pittsburgh and Minneapolis do not achieve the percentages or numbers required to constitute monopolization. *United States* v. *Aluminum Co. of America*, 148 F. (2d) 416, 424 (C. C. A. 2); *Standard Oil Company (Indiana)* v. *United States*, 283 U. S. 163, 176, 179; *United States* v. *U. S. Steel Corporation*, 251 U. S. 417.

The cases on which the plaintiff relies, do not concern the extent to which exclusive purchasing arrangements are reasonable or permissible within the public interest, but are cases of price fixing* and specific restrictive practices imposed by horizontal combinations.** Nor does the plaintiff's attempted analogy to section 3 of the Clayton Act afford any basis for evaluating the reasonableness of, or the public interest affected by, exclusive purchasing arrangements; and, of course, the allegations of the complaint are not within, and this action is not based on, section 3 of the Clayton Act.

II

Yellow and Cab Sales are not required to compete with Parmelee for contracts with railroads.

The complaint charges that "Yellow and Cab Sales will not attempt to compete with Parmelee for contracts with railroad or railroad terminal associations to transport passengers and their luggage between railroad stations in Chicago" (par. 19 (c), R. 8). The complaint also alleges that "Parmelee operates 85 *non-licensed* cabs in transferring passengers between railroad stations in Chicago" (par. 14, R. 6).

* *Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20, 48-49.

** *Montague & Co.* v. *Lowry*, 193 U. S. 38; *Eastern States Lumber Dealers' Assn.* v. *U. S.*, 234 U. S. 600, 611; *Fashion Originators' Guild Inc.* v. *F. T. C.*, 312 U. S. 457; *United States* v. *Crescent Amusement Co.*, 323 U. S. 173.

The plaintiff argues that such lack of competition by Yellow and Cab Sales for the Parmelee contracts (which are to carry only railroad passengers only between railroad stations), is a restraint prohibited by the Sherman Act.

This argument breaks against the ordinances of the City of Chicago. Yellow and Cab Sales operate their taxicabs as "licensees" of the City of Chicago, subject to its ordinances (R. 6). Parmelee has no licenses from the City of Chicago, and the "cabs" which it operates pursuant to contracts with the railroads are "unlicensed" (R. 6). Section 4 of the ordinance of the City of Chicago of May 18, 1934,* provides:

> "*Every person* shall be entitled to the service of the *licensee* at the established rates and charges between *any two points* within the corporate limits of the city."

The duties imposed by this ordinance on Yellow and Cab Sales are to carry "every person" to whatever destination he chooses within Chicago. The contract between Parmelee and the railroads, however, restricts transportation by Parmelee only to railroad passengers and only between railroad stations. Since the duties imposed by ordinance on Yellow and Cab Sales to carry "every person" anywhere within Chicago cannot, as in the case of Parmelee, be restricted by contracts with railroads to the carriage of only railroad passengers only between railroad stations, the plaintiff's claim of a violation of the Sherman Act has no basis.

Additionally, subject to the ordinances binding them, Yellow and Cab Sales do offer their services to all railroad passengers at Chicago railroad stations (pars. 4-6,

---

* Appendix B.

of complaint, R. 3-4) and therefore in that respect do compete with Parmelee.*

The plaintiff's suggestion (Pltf.'s Br., p. 45) that although "general taxicab service and between-station service may be distinct fields of operation", "a company engaged in one field is a natural potential competitor for the other", is neither based on any allegation of the complaint, nor, under the allegations of the complaint, forms the subject of any violation of the Sherman Act. There is no suggestion anywhere in the complaint that Yellow or Cab Sales (or their predecessors) have ever had contracts with the railroads; nor that they have ever contemplated obtaining such contracts; nor, indeed, that they have ever engaged or contemplated engaging in any business other than the general taxicab business.** On the contrary, the allegations of the complaint affirmatively show that Yellow and Cab Sales (and their predecessors) have always been in the general taxicab business (R. 4-5), and Parmelee's exclusive contracts with the railroads are of long standing.*** The argument of the plaintiff that by possibility Yellow and Cab Sales might change the char-

* The further facts presented to the District Court which, located in Chicago, it might notice as a matter of common knowledge, were these: Parmelee's "cabs" are actually limousine-coaches carrying seven or ten passengers. No one person may alone hire such limousine-coaches and no one can travel in such a coach to the destination of his choice; coach passengers must await appropriate loading of coaches and can travel only between railroad stations. It was with respect to this service that the District Court said:

> It is "a commonly known fact that the taxicab business is totally different from Parmelee's both from a standpoint of equipment used and services rendered" (R. 27).

** In *United States* v. *United Shoe Machinery Co.*, 247 U. S. 32, competition actually threatened was forestalled, and the plaintiff's quotation in footnote 21 at p. 45 of its brief must be read against the facts of such threatened competition.

*** The validity of exclusive contracts such as Parmelee's with the railroad companies has repeatedly been sustained. *Donovan* v. *Pennsylvania Company*, 199 U. S. 279; *Delaware, Lackawanna & Western Railroad Company* v. *Morristown*, 276 U. S. 182; *Black and White Taxicab and Transfer Company* v. *Brown and Yellow Taxicab and Transfer Company*, 276 U. S. 518. In the *Donovan* case, Parmelee Transfer Company, a predecessor of Parmelee, transported railroad passengers by omnibus between the Pennsylvania Company's railroad station and other railroad stations in Chicago pursuant to a like exclusive contract with the Pennsylvania Company.

acter of their business so as to compete with Parmelee for exclusive contracts with railroads is, accordingly, mere conjecture and without foundation. Affiliates engaged in different businesses are not required to compete with each other. *Alexander Milburn Co.* v. *Union Carbide & Carbon Corp.*, 15 F. (2d) 678 (C. C. A. 4), certiorari denied 273 U. S. 757.

III

Neither the assertion by Yellow and Checker of their license and priority rights, nor the taxicab operations conducted by Yellow and Cab Sales in the City of Chicago violates the Sherman Act.

The basic charge of the complaint is that Yellow and Checker, by asserting their license and priority rights, excluded others from possible participation in the limited number of outstanding licenses (R. 8, 17).

This claimed violation of the Sherman Act runs counter, however, to two fundamental conceptions. First, the Sherman Act does not operate against any rights or restraints flowing from state or local regulation; and second, the commerce concerned is local and not interstate commerce.

A

The validity of Yellow and Checker's license and priority rights under the ordinances of the City of Chicago has specifically been established by the Supreme Court of Illinois in *Yellow Cab Co.* v. *City of Chicago*, 71 N. E. 2d 652, Appendix E; and that decision also held that no monopoly existed, because the number of licenses and the rights of the licensees were subject to the control of the City of Chicago.

The license rights of Yellow and Checker derive from these ordinances; and any exclusion of other potential li-

censees, resulting from the assertion by Yellow and Checker of their license and priority rights, accordingly flows from these ordinances. It is established that the Sherman Act does not operate against any such rights or restraints flowing from state or local regulation. In *Parker* v. *Brown*, 317 U. S. 341, a program for the marketing of raisins sold in interstate commerce and for regulating their prices, pursuant to the California Agricultural Prorate Act, was held not to violate the Sherman Act. Mr. Chief Justice Stone said:

> "But it is plain that the prorate program here was never intended to operate by force of individual agreement or combination. It derived its authority and its efficacy from the legislative command of the state and was not intended to operate or become effective without that command.
>
> * * *
>
> "It is the state which has created the machinery for establishing the prorate program. Although the organization of a prorate zone is proposed by producers, and a prorate program, approved by the Commission, must also be approved by referendum of producers, it is the state, acting through the Commission, which adopts the program and which enforces it with penal sanctions, in the execution of a governmental policy" (p. 352).

Such State regulations, said Mr. Chief Justice Stone,

> "* * * are to be upheld because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of safety, health and well-being of local communities, and which, because of its local character, and the practical difficulties involved, may never be adequately dealt with by Congress" (p. 362).

In *Field v. Barber Asphalt Paving Co.*, 194 U. S. 618, a municipality which required paving to be done with Trinidad Lake Asphalt, thereby excluding the sale of all other kinds of asphalt by other contractors, was held not to violate the Sherman Act. Mr. Justice Day said for this Court:

> "Further objection on Federal grounds is urged, in that the specification of Trinidad Lake Asphalt for this improvement is in violation of the interstate commerce clause of the Constitution of the United States, and of the so-called Sherman Act of July, 1890. The right to provide for this paving was vested by the Missouri statute in the board of aldermen. The right to select the material for the paving was vested in that body; they saw fit to choose Trinidad Lake asphalt for the paving. Their right so to do, under the charter powers of such cities as Westport, notwithstanding competitive bidding is thereby rendered impossible, has been sustained by the Supreme Court of Missouri" (p. 622).
>
> • • •
>
> "In the present case it may be that the use of this kind of asphalt, under municipal authority conferred by the State, will in a limited degree affect interstate commerce, but it certainly is not one of those direct interferences with the power over, and express control of, the subject given by the Constitution to Congress.
>
> • • •
>
> "The attempt to invoke the provisions of the Sherman Act in this case is equally unavailing" (p. 623).

The plaintiff argues that it does not attack the right of the City of Chicago to issue taxicab licenses but seeks only to preclude Yellow and Checker from exercising their rights under such licenses. This argument is manifestly specious. If the licenses granted to Yellow and Checker could so be abrogated, the right of the City of Chicago to

issue licenses would to that extent be restricted. Since the plaintiff concedes that the Sherman Act cannot be used to restrict such right of the City of Chicago, it cannot accomplish this result indirectly. Moreover, the license rights of Yellow and Checker which the plaintiff seeks to abrogate are the very rights which the Illinois Supreme Court specifically has sustained. *Yellow Cab Co.* v. *City of Chicago*, 71 N. E. 2d 652, Appendix E.

B

The complaint alleges that the defendants conspired to restrain and monopolize "interstate trade and commerce" in the business of furnishing cab service for hire in Chicago. The plaintiff concedes that the commerce which is the subject of the claimed violations is not interstate railroad transportation; this concession obviously results from the utter lack of any suggestion that the defendants have in any respect monopolized or restrained railroad transportation. The plaintiff also concedes that, disconnected from interstate railroad transportation, the general taxicab business in Chicago is local commerce. The question thus presented is— Does the Chicago taxicab business of Yellow and Cab Sales become interstate commerce because or to the extent that some of their taxicabs sometimes carry passengers who have been or are about to become interstate railroad passengers?

The taxicabs of Yellow and Cab Sales do not cross state lines; on the contrary, they are confined by ordinance to transportation "between any two points within the corporate limits of the City."* None of the taxicabs of Yellow and Cab Sales serves only railroad passengers; on the contrary, each is required by ordinance to serve "every person" within the limits of Chicago.** No con-

* See Section 4 of Ordinance of May 18, 1934, Appendix B.

** Idem.

tractual or other arrangements with respect to taxicab service exist between Yellow or Cab Sales and any of the railroads; on the contrary, the duties which are imposed on licensees by ordinance, to carry "every person" to whatever destination he chooses within Chicago, preclude any such arrangement. Taxicab fares are paid to taxicab drivers, and not to any railroad, and uniform rates for taxicab passengers are fixed by the City of Chicago.* The carriage by any taxicab of a person who has been or is about to become a railroad passenger is entirely casual and accidental; and the number of such trips constitutes an extremely small part of the total taxicab trips of the public in chicago.**

Railroad passengers who do not use taxicabs to go to or from Chicago railroad stations may use trolley cars, subways, buses, private automobiles, or other means of conveyance. Any conteption, therefore, that the taxicab operations are part of the interstate commerce of railroad passengers within the meaning of the Sherman Act immediately carries with it the contention that such trolley cars, subways, buses, private automobiles, or other means

---

* Idem.

** The District Court said:

> "The following facts either appear in the complaint, are of common knowledge, or have been admitted in briefs and arguments. A railroad passenger upon his arrival in Chicago may freely choose one of several methods of local transportation whether he be going to another station or to any other point in the City. Such passenger, prior to his arrival, makes no arrangement with any railroad or with anyone else for the hire of a taxicab in Chicago. If, upon arrival, he determines to take a taxicab he makes arrangements for carriage with the taxicab driver and is transported to another point in Chicago or its vicinity. The defendants' taxicabs do not cross state lines. The railroad passenger has control of the taxicab both as to contents, direction and time of use. He pays his taxicab fare to the taxicab driver at a rate fixed by the City of Chicago and the railroads have no control or interest in that fare. The carriage of a railroad passenger by any particular taxicab is casual and incidental and the number of taxicab trips in which interstate railroad passengers are transported is a small part of the total number of taxicab trips in Chicago. Finally, no corporate, contractual or other relationship in the nature of integration exists between the railroads and the taxicab companies" (R. 23-24).

of conveyance are likewise part of the interstate commerce of railroad passengers within the meaning of that Act. The District Court said:

> "* * * in Chicago at least two of the largest stations are specially designed to provide its passengers with easy means of access to the elevated lines. A number of railroad depots also provide accommodations for private automobiles. Stations in other cities are specially designed to furnish railroad passengers with access to large hotels. Can it be logically urged that because of these arrangements for the convenience of the passengers, the elevated lines or such hotels are engaged in interstate commerce" (R. 23)?

This Court has stated that: "Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business". *Swift and Company* v. *United States*, 196 U. S. 375, 398; *Shanks* v. *Delaware, Lackawanna and Western R. R.*, 239 U. S. 556, 558; *Chicago, Burlington & Quincy R. R.* v. *Harrington*, 241 U. S. 177, 180.

In *New York ex rel. Pennsylvania Railroad Company* v. *Knight*, 192 U. S. 21, the Pennsylvania Railroad Company maintained a taxicab service to transport its railroad passengers between their homes in New York City and the Company's stand at the Twenty-Third Street Ferry in New York City, for which a separate charge was made. Sustaining a franchise tax by the State of New York on such taxicab operations, Mr. Justice Brewer said for this Court:

> "As we have seen, the cab service is rendered wholly within the state, and has no contractual or necessary relation to interstate transportation. It is either preliminary or subsequent thereto" (p. 27).

> "If the cab which carries the passengers from the hotel to the ferry landing is engaged in interstate

transportation, why is not the porter who carries the traveler's trunk from his room to the carriage also so engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply hay and grain for the horses also engaged in interstate commerce? And where will the limit be placed?

"We are of opinion that the cab service is an independent local service, preliminary or subsequent to any interstate transportation. * * *" (p. 28).

Although the precise point of decision in the *Knight* case was the validity of the state tax, the basis of decision was that such taxicab service did not constitute interstate commerce; and this basis of decision was in effect adopted by this Court in later cases under the Sherman Act. In *Stafford* v. *Wallace,* 258 U. S. 495, 528, this Court said of the taxicab service in the *Knight* case:

"This court [illegible] that because it was independent of the railroad transportation, and not included in the contract of railroad carriage, it did not come within interstate commerce."

Similarly, in *Swift & Co.* v. *United States,* 196 U. S. 375, 405, this Court considered the *Knight* case as involving an "independent matter" from railroad transportation.

United States v. *Capital Transit Company,* 325 U. S. 357, referred to by the plaintiff, presented a different question. There a bus company maintained local transportation as an integrated part of its District of Columbia-Virginia bus service. Joint fares were prescribed by the Interstate Commerce Commission in connection with the District-Virginia transportation, and discrimination against other District-Virginia bus carriers was prohibited. In the instant case, there is neither connection between the defendant taxicab companies and any rail-

road, nor discrimination by the defendant taxicab companies against any railroad or railroad passenger.

The cases referred to by the plaintiff under the National Labor Relations Act, the Fair Labor Standards Act, and other statutes, are inapplicable. None of these cases undertook to decide that the acts under consideration were themselves interstate commerce, but only whether they "affected" interstate commerce. In the instant case, however, the plaintiff posits the taxicab operations as the "interstate commerce" which is the subject of this action. It is "treacherous business" to translate "an implication drawn from the special aspects of one statute to a totally different statute" (*Federal Trade Commission* v. *Bunte Brothers, Inc.*, 312 U. S. 349, 353); and "Thus, while a phase of industrial enterprise may be subject to control under the National Labor Relations Act, a different phase of the same enterprise may not come within the 'commerce' protected by the Sherman Law" (*Kirschbaum Co.* v. *Walling*, 316 U. S. 517, 521).

Since the taxicab operations of Yellow and Cab Sales are not themselves interstate commerce, no question of monopolization or restraint of those local taxicab operations arises under the Sherman Act. But even beyond this, the complaint contains no allegations that any restraints arising from taxicab service are directed against railroad passengers. No charge is made that such services are inadequate with respect to railroad passengers or discriminatory against them.

Conclusion

This Court noted probable jurisdiction on the defendants' motion to dismiss or affirm.

For the reasons stated the judgment of the District Court should be affirmed in its entirety; and, in respect of the partial judgment for which the defendants alterna-

tively moved (R. 20), the judgment of the District Court should be affirmed as to that part of the complaint which is based on the furnishing of cab services for hire in Chicago.

Respectfully submitted,

SAMUEL H. KAUFMAN,
Attorney for Appellees.

SAMUEL H. KAUFMAN,
A. LESLIE HODSON,
HAROLD S. LYNTON,
of Counsel.

APPENDICES TO BRIEF FOR APPELLEES

Appendix A.

ORDINANCES OF SEPTEMBER 25, 1929.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. That the following paragraphs be added to Chapter LXXXV of The Chicago Municipal Code of 1922, under Article 1, to be known as Section 3916-A:

"Paragraph 1. No taxicab license, as hereinafter defined, shall hereafter be issued unless the Public Vehicle License Commission, as hereinabove created, after a hearing, shall by resolution declare that public convenience and necessity require the proposed taxicab service for which application for a license is made: Provided that such declaration of public convenience and necessity shall not be necessary;

(a) For the licensing of the same number of taxicabs licensed for operation and operated by the applicant under the same name and colors on the 15th day of September, A.D. 1929, or the renewal of the same number of licenses annually thereafter; or

(b) For the renewal of licenses to the applicant for the number of taxicabs of the applicant, for which the said Public Vehicle License Commission shall have at any time prior to the date of application for such renewal, made a declaration of public convenience and necessity.

Paragraph 2. In determining whether public convenience and necessity require the licensing of such taxicabs for which application may be made, the Public Vehicle License Commission shall take into consideration whether the demands of public convenience and necessity require such proposed or such additional taxicab service within the City of Chicago; the financial

responsibility of the applicant; the number, kind, type of equipment, the schedule of maximum rates proposed to be charged, the color scheme to be used by the applicant; the increased traffic congestion and demand for increased parking spaces on the streets of the City which may result, and whether the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such additional license, and such other relevant facts as the Public Vehicle License Commission may deem advisable or necessary.

Paragraph 3. Any applicant for a taxicab license, *under the provisions of this article, shall make proper* application therefor on blanks to be furnished by the Public Vehicle License Commission, and immediately upon the filing of such an application, the Public Vehicle License Commission shall cause a notice to be published in one of the leading daily newspapers of the City of Chicago, which said notice shall be paid for in full by the applicant, and which said notice shall set forth the fact that the certain application has been filed for a taxicab license, the name of the applicant, kind of equipment and all other information from the said application, which said Public Vehicle License Commission may deem necessary, and notifying all holders of existing taxicab licenses that a public meeting will be held at a public place in the City of Chicago, to be designated by the Public Vehicle License Commission, at a time not less than five days nor more than fifteen days after the date of the first publication of said notice and said notice is to be published for three successive days. All holders of existing taxicab licenses shall thereupon be entitled to file any complaints and protest that said holders may see fit. At the time of the holding of the investigation and hearing with reference to whether the public convenience and necessity require the operation of such additional vehicle or vehicles covered in the application, the Public Vehicle License Commission shall consider all of the complaints and protests, and in conducting its hearings, shall have the right to call such witnesses as it may see fit. In all of such hearings the burden of proof shall be upon the applicant to establish by

clear, cogent and convincing evidence which shall satisfy the said Public Vehicle License Commission beyond a reasonable doubt, that public convenience and necessity require such operation of the vehicle or vehicles for which the said application has been made.

Paragraph 4. If the Public Vehicle License Commission finds from its investigation and hearing that the public convenience and necessity justify the operation of the vehicle for which license is desired, it shall notify the applicant of its finding. Within 60 days thereafter, the applicant shall furnish to the Public Vehicle License Commission any and all additional information which may be required, and if the said Public Vehicle License Commission then finds that the applicant is the owner and bonafide operator of the vehicle for which license is desired, and that such vehicle complies with all of the ordinances of the City of Chicago, and all of the rules and regulations enacted by the Public Vehicle License Commission, license shall thereupon be issued to the said applicant upon the payment of the proper license fee.

If the Public Vehicle License Commission finds from such investigation and hearing that the public convenience and necessity do not justify the operation of the vehicle for which license is desired, it shall forthwith notify the applicant of said finding.

Paragraph 5. The applicant shall regularly and daily operate his or its licensed taxicabs during each day of the licensed year to the extent reasonably necessary to meet the public demand for such taxicab service. Upon complete abandonment of taxicab service, for a period of ten consecutive days by an owner or operator of taxicab service, the Public Vehicle License Commission, upon hearing after five days notice to the said owner or operator shall thereupon recommend to the Mayor of the City of Chicago that the license of such owner or operator shall be revoked covering such taxicabs of the said owner or operator."

SECTION 2. This ordinance shall be in force and effect from and after its passage.

Appendix B.

ORDINANCE OF MAY 18, 1934

An ordinance granting permission and authority for the operation of taxicabs within the city and for the appointment of a public vehicle license commissioner.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Whenever used in this ordinance:

(a) the word "city" means the City of Chicago;

(b) the word "council" means the City Council of the City of Chicago;

(c) the word "taxicab" means any public passenger motor vehicle equipped with a taximeter and licensed as a taxicab;

(d) the word "taximeter" means any mechanical device which records and indicates a charge or fare measured by distance traveled, waiting time and extra passengers;

(e) the word "licensee" means every person, firm or corporation owning any taxicab and having filed with the City Clerk formal written acceptance of this ordinance, and

(f) the word "commission" or "commissioner" means the body or officer having supervision over taxicab operations in the city.

SECTION 2. Subject to the conditions and limitations of this ordinance, permission and authority are hereby granted to the licensees to operate taxicabs upon the public streets and other public ways within the corporate limits of the city for the term ending December 31, 1940 unless sooner terminated or revoked as hereinafter provided.

SECTION 3. In addition to all license fees every licensee shall pay to the city quarter-annually in advance the sum of $12.50 for each taxicab of the licensee as compensation for the use of the streets and other public ways by authority of this ordinance. The compensation herein provided for shall be paid on the first day of January, March, July and October of each calendar year, provided that every licensee who shall accept this ordinance in the year 1934 shall be obligated to pay said compensation beginning as of July 1, 1934 as if this ordinance had been accepted by said licensee on July 1, 1934.

SECTION 4. The council from time to time may establish by a general ordinance just and reasonable rates and charges uniform as to all taxicabs operated within the city. No licensee shall charge, demand, collect or receive greater or less or different rates of compensation for the service of said licensee than those established or fixed from time to time by a general ordinance. Every person shall be entitled to the service of the licensee at the established rates and charges between any two points within the corporate limits of the city.

Upon acceptance of this ordinance and until such time as the council shall establish by a general ordinance other rates and charges for the transporation of passengers and their baggage by taxicabs the licensee agrees to abide by the following schedule of rates and charges, which is hereby declared to be just and reasonable:

For the first one-third of a mile or fraction thereof for one person	15 cents
For each additional two-thirds of a mile or fraction thereof for one person	10 cents
For each additional person of the age of twelve years or more for the whole trip	5 cents
For each three minutes of waiting time or fraction thereof	10 cents

such waiting time shall include the time beginning ten minutes after call time at the place to which the taxicab has been called, when it is not in motion, the time consumed by unavoidable delays at street intersections, bridges or elsewhere and the time consumed while standing at the direction of a passenger.

Every passenger under twelve years of age when accompanied by an adult shall be carried without charge.

No licensee shall carry or permit to be carried in a taxicab more than five passengers of the age of twelve years or more at the same time.

Passengers shall be entitled to the conveyance of their ordinary hand baggage without charge. A fee of twenty-five cents may be charged for carrying a trunk, but no licensee shall carry or permit to be carried any trunk except inside of the taxicab.

SECTION 5. Every licensee shall pay each judgment or award rendered against such licensee by any court or commission of competent jurisdiction within sixty days after such judgment or award shall become final and not appealable.

No licensee shall work or employ any person to work as a driver of any taxicab operated by such licensee for more than twelve out of twenty-four consecutive hours.

The licensee shall obey all laws and ordinances relating to the operation of motor vehicles, taxicabs and the regulation of traffic and all lawful rules and regulations of the commission.

SECTION 6. Nothing in this ordinance shall be construed to limit the city in the exercise of its police powers and the city hereby expressly reserves the right to pass all ordinances and make all regulations affecting the licensee which may be necessary to promote or secure health, safety, morals, comfort, convenience and general welfare;

provided, however, that no ordinance or regulation shall authorize the issuance of any license for a taxicab nor shall any such license hereafter be issued except upon transfer to permit replacement of a taxicab or in the annual renewal of such license unless the commission, after a hearing, by resolution shall declare that public convenience and necessity requires additional taxicab service and provided further, that no license for a taxicab hereafter shall be issued or re-issued upon transfer or in the annual renewal of such license unless and until the applicant for such license shall have accepted this ordinance.

In determining whether public convenience and necessity requires the licensing of any taxicab the commission shall take into consideration:

1. the demand for such service;
2. the effect on traffic congestion;
3. whether the safe use of the streets for vehicular and pedestrian traffic will be impaired;
4. the financial responsibility of the applicant and the amount of reserves to be established for the payment of personal injury, death and property damage claims;
5. the wages or other compensation to be paid to or received by the driver of such taxicab;
6. the color scheme and character of equipment and
7. any other facts which the commission may deem relevant.

The commission shall hold public hearings from time to time for the purpose of considering any objections or evidence pertinent to the question of the public convenience and necessity for the issuance of licenses for taxicabs. Notices of such public hearings containing the time and place thereof and the names of applicants for licenses shall

be published in the official newspaper of the city. The commission may continue any public hearing from time to time without notice by publication.

SECTION 7. Every taxicab shall be operated regularly to the extent reasonably necessary to meet the public demand for taxicab service. In the event that the service of any taxicab is discontinued excepting on account of strikes, acts of God or causes beyond the control of the licensee the commission may give written notice to the licensee to restore such taxicab to service and, if the same is not so restored within five days after such notice, the commission, in its discretion, may recommend to the Mayor that the license for such taxicab be revoked and the Mayor, in his discretion, may revoke same.

SECTION 8. For the purpose of enabling the city to inform itself as to the character and quality of service rendered the public and just and reasonable uniform rates of fare to be fixed from time to time by the council and for determining whether the licensee is maintained adequate reserves to meet personal injury, death and property damage claims, the city and the commission shall have access to the plant, equipment, apparatus and other property and the inventories, books, papers, accounts and records of all property and operations of the licensees at all reasonable times. Every licensee, at all times, shall keep in the city complete and accurate books and records of all property, operations, receipts and disbursements, in such form and detail as may be prescribed from time to time by the commission. Every licensee shall file with the commission semi-annually, before the first day of March and before the first day of September in each year, a true statement of all assets and liabilities, gross earnings, operating expenses and income of the licensee for the preceding six months ending December 31, and June 30, respectively and, whenever called upon by the city or the commission, shall file such other information as may be required by them

or either of them. All statements required to be filed pursuant to this ordinance shall be sworn to by the licensee or the duly authorized agents of the licensee.

Every licensee shall file with the commission an address in the city to which all notices required to be given to the licensee under this ordinance may be addressed. All such notices shall be deemed good and sufficient for all purposes when deposited in the United States mail in a post paid envelope addressed to the licensee at the address on file with the commission.

SECTION 9. In the event that the commission after investigation and hearing shall determine that any licensee has obtained any license for any taxicab by fraud or false representation or misstatement of fact pertinent to the question of whether public convenience and necessity required the issuance of such license or in case any licensee shall fail to carry out any promise made to the commission before the issuance of such license the commission may, in its discretion, revoke such license.

SECTION 10. In the event that any licensee shall make default in the observance or performance of any one or more of the agreements, conditions or obligations imposed upon such licensee by this ordinance and if any such default shall continue for a period of ten days after written notice thereof from the commission to the licensee citing the alleged default on the part of the licensee then in each and every such case the commission shall report the fact to the council and, in addition to all other rights and remedies of the city in such case, the council may by resolution terminate the permission and authority hereby granted to such licensee and thereupon the Mayor shall revoke all taxicab licenses held by such licensee.

SECTION 11. Immediately after this ordinance becomes effective the Mayor, with the approval of the council, shall

appoint a public vehicle license commissioner for a term of two years and until his successor is appointed and qualified. The commissioner, before he enters upon the duties of his office shall file a bond with good and sufficient surety or sureties to be approved by the council in the penal sum of $5,000.00 for the faithful performance of his duties and shall take and subscribe to the oath or affirmation required of city officers, which oath or affirmation shall be filed in the office of the city clerk.

The annual salary of the commissioner shall be $7,500.00. He shall have power to employ such assistants and employees as may be provided for in the annual appropriation ordinance.

SECTION 12. In addition to the power and authority heretofore given by ordinance to the commission and also in addition to the power and authority hereinbefore given, but not in limitation thereof, the commission shall have the following powers and duties:

(a) to make such investigations as may be necessary for the establishment of just and reasonable rates of fare and to make recommendations thereon to the council;

(b) to recommend to the council the number, location and capacity of cab stands;

(c) to recommend to the council physical and mechanical standards for taxicabs and their appurtenances;

(d) to make such investigations as may be necessary and to recommend to the council measures for the prevention of accidents;

(e) to adopt such rules and regulations as it may deem expedient for the enforcement of the provisions of this ordinance, and

(f) to exercise such other powers and perform such other duties as may be prescribed from time to time by the council.

On or before the first day of April in each year the commission shall submit to the council an annual report of its transactions for the preceding calendar year, together with such recommendations as it may deem necessary or proper.

SECTION 13. This ordinance shall be in full force and effect from and after its passage, provided one or more persons, firms or corporations shall within sixty days after the passage of this ordinance qualify as a licensee hereunder by filing with the city clerk formal written acceptance of this ordinance. The invalidity of any section or part of any section of this ordinance shall not affect the validity of any other section or part thereof.

Appendix C.

ORDINANCE OF DECEMBER 22, 1937.

"WHEREAS, the Public Vehicle License Commissioner has reported the result of investigation of conditions prevailing in the operation of taxicabs within the city and has determined that public convenience and necessity require that the number of taxicabs within the City of Chicago be reduced to 3,000; and

"WHEREAS, certain licensees under the ordinance of May 18, 1934, have agreed to surrender a sufficient number of taxicab licenses to effect a reduction of the number of taxicabs within the City of Chicago to 3,000;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. In the event that sufficient number of taxicab licenses shall be surrendered by licensees under the ordinance of May 18, 1934, to reduce the number of taxicabs within the City of Chicago to 3,000 on or before March 31, 1938, no taxicab license shall thereafter be issued except upon transfer to permit replacement of a taxicab or in the annual renewal of any such license or upon assignment of any such license or upon assignment of the right to apply for such license as hereinafter provided or upon revocation for cause or termination in any other manner of any such license.

SECTION 2. Notwithstanding Section 1 of this ordinance taxicab licenses in excess of 3,000 may be issued when authorized by general ordinance without consent of licensees under the ordinance of May 18, 1934; provided that such licensees who shall have voluntarily surrendered any taxicab licenses or their right to renewal of any taxicab licenses on or before March 31, 1938, shall have the right to

such number of taxicab licenses as were so surrendered, and such right shall be prior to the right of any person, firm or corporation until such licensees who have so surrendered their taxicab licenses shall have either released their right to apply for taxicab licenses or shall have failed to make application therefor within thirty (30) days after publication of notice of public hearing upon the question of public convenience and necessity for the issuance of licenses for taxicabs as provided by ordinance. As between such licensees who have so surrendered taxicab licenses and who have not released or waived their right to apply for their substitution as herein provided such licenses shall be issued ratably in the proportion which the number voluntarily surrendered by each such licensee bears to the number voluntarily surrendered by all other such licensees.

SECTION 3. Each taxicab license or the right to apply for such license shall be assignable subject to the power of the City of Chicago to determine the qualifications of the assignee to such license. No taxicab license shall be issued to any assignee unless and until such assignee shall have assumed all liabilities of the assignor arising from the maintenance and operation of any taxicab.

SECTION 4. Subject to the conditions and limitations of this ordinance and an ordinance granting permission and authority for the operation of taxicabs within the city and for the appointment of a public vehicle license commissioner, passed May 18, 1934, and appearing in the Journal of the Proceedings of the City Council of that date at pages 2271 to 2273, both inclusive, the permission and authority granted to the licensees under said ordinance of May 18, 1934, to operate taxicabs upon the public streets and other public ways within the corporate limits of the city is hereby extended to December 31, 1945, unless sooner terminated or revoked as provided in said ordinance of May 18, 1934.

SECTION 5. Nothing in this ordinance shall be construed to abrogate or modify the ordinance of May 18, 1934, or any of its provisions except insofar as this ordinance is inconsistent with said ordinance of May 18, 1934, and except that the City Council may provide for the installation and operation of an electric call system for taxicabs for the purpose of reducing the number or capacity of cab-stands in the city.

SECTION 6. This ordinance shall be in full force and effect from and after its passage provided one or more licensee under the ordinance of May 18, 1934, shall within thirty (30) days after passage of this ordinance file with the City Clerk formal written acceptance of this ordinance and shall have surrendered at least 616 taxicab licenses.

Appendix D.

ORDINANCE OF JUNE 26, 1945.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Section 4 of the ordinance relating to taxicab licenses passed December 22, 1937, appearing on page 5027 of the Journal of Proceedings of the City Council of that date is hereby amended by striking out the year "1945" in line twelve and inserting in lieu thereof the year "1950".

SECTION 2. This ordinance shall be in full force and effect from and after its passage provided one or more licensees under the ordinance passed May 18, 1934, and appearing in the Journal of Proceedings of the City Council of that date on pages 2271 to 2273, inclusive, granting permission and authority for the operation of taxicabs within the city and for the appointment of a public vehicle commissioner, as amended, shall within 30 days after the passage of this ordinance file with the City Clerk formal written acceptance of this ordinance.

Appendix E.

SUPREME COURT OF ILLINOIS

Yellow Cab Company *et al.*, Appellees, v. The City of Chicago *et al.*, Appellants.

Docket No. 29686—Agenda 28—November, 1946.

Mr. JUSTICE FULTON delivered the opinion of the court:

This is an appeal from the action of the circuit court of Cook county, granting to appellees a permanent injunction restraining appellants from cancelling or causing to be cancelled any taxicab licenses of appellees pursuant to notices given to appellees by the public vehicle license commissioner of the city of Chicago as directed by resolution of the city council of the city of Chicago. Said injunction also restrained appellants from issuing or causing to be issued any permits or licenses pursuant to a resolution, order or ordinance of the city council of the city of Chicago, passed January 16, 1946, and restrained appellants from issuing any permits or licenses in excess of the total number of 3000 without first holding hearings with respect to the public convenience and necessity therefor and without first affording appellees an opportunity to apply for and obtain such licenses to the number thereof provided for in a previous ordinance of the city council, passed on December 22, 1937.

The validity of certain ordinances of the city of Chicago is challenged by the parties in this cause and the trial judge has certified that the public interest requires the appeal be taken directly to this court in view of the questioned validity of these municipal ordinances.

For a proper consideration and determination of the issues in this case it is necessary to review the action of the city of Chicago and of the appellees regarding the oper-

ation of taxicabs in that city during the past fifteen years. On May 18, 1934, the city council passed a comprehensive ordinance to regulate the operation of taxicabs in the city of Chicago. This ordinance provided for the issuance of licenses to operate taxicabs in the city for a term ending December 31, 1940, unless sooner terminated or revoked as provided in the ordinance. The ordinance provided for the payment of license fees and the establishment of taxicab rates to be charged uniformly by all taxicabs, limited the number of passengers to be carried in each cab, required the payment of judgments rendered for personal injury, property damage or wrongful death against any licensee, limited the hours of work of each driver and contained other provisions designed for the protection of the citizens of the city of Chicago. The ordinance also contained a provision that no licenses should be subsequently authorized except upon transfer to permit replacement of the taxicabs or in the annual renewal of such licenses unless the commissioner, after a hearing, found that public convenience and necessity required additional taxicab service. No new licenses could be issued to any licensee unless he accepted this ordinance. This comprehensive ordinance also established a basis for making a determination as to the necessity and public convenience requiring licensing of additional taxicabs and provided that in the event of discontinuation of service of any taxicab excepting on account of strikes, acts of God, or anything beyond the control of the licensee the commissioner might give notice to the licensee to restore such taxicabs to service and the failure to restore such service within five days after notice would give the commissioner the discretion to recommend to the mayor that the license be revoked and the mayor in his discretion might revoke the same. This ordinance provided that it should be in full force and effect from and after its passage, if one or more persons, firms, or corporations operating taxicabs should within 60 days, file with the city clerk formal written acceptance of the same. Both appellees filed acceptances thereof.

Based upon this ordinance, 4108 taxicab licenses were issued in the city of Chicago. The Yellow Cab Company received 2166 licenses and the Checker Taxi Company received 1500 licenses. Subsequent operation of taxicabs in the city of Chicago resulted in unprofitable operations from the standpoint of the drivers and the licensees, resulting in strikes and other violence on the city streets, and in 1937 it was determined that a reduction in the number of taxicabs operated in the city and an increase in the fares charged was in the public convenience and necessity. Thereafter on December 22, 1937, the city council passed an ordinance providing for a method of voluntary surrender by licensees of enough of their licenses to reduce the total from 4108 to 3000. This ordinance provided that in the event the number of authorized licenses should later be increased above the 3000 figure said licenses, to the number surrendered, should first be issued to licensees ratably in proportion to the number voluntarily surrendered by each licensee. The ordinance likewise provided that authority of the licensees to operate taxicabs under the 1934 ordinance be extended to December 31, 1945, provided the licensees accepted the terms of the 1937 ordinance.

The Yellow Cab Company voluntarily surrendered 571 of its licenses and the Checker Taxi Company surrendered 500 of its licenses. Other licensees surrendered the balance of the required reduction. The appellees and other licensees continued to operate under this 1937 ordinance. The evidence shows that in 1940 and in 1941 appellees replaced their taxicab fleets in the city with new equipment, but since that time due to economic restrictions occasioned by World War II they have been unable to obtain new equipment customarily used by them for taxicab purposes. The evidence shows that the average life expectancy of a taxicab in the city of Chicago is about three years and that those operated in the city by appellees at the time of the hearing in this case have exceeded their life expectancy by more than 1½ years.

With the end of the war it was thought that appellees and others would be able to replace their taxicab fleets with new equipment and on June 21, 1945, the city council passed an extension ordinance extending the term of the ordinance of 1937 for five years, ending December 31, 1950. This action of the city council was preceded by pledges made to the city by appellees that they would replace their fleets with new equipment as soon as possible.

On December 28, 1945, the city council passed a resolution reciting that demands for all forms of local transportation had increased on account of World War II and directed the commissioner to enforce the provisions of the 1937 and 1945 ordinances by compelling full operation of 3000 taxicabs in the city by January 15, 1946. In the event that full operation of said taxicabs could not be accomplished, the commissioner was authorized to take steps for licensing additional taxicabs in the city.

On January 16, 1946, the city council passed the following: "ORDERED, That the Public Vehicle License Commissioner be and he is hereby authorized and directed to issue two hundred fifty (250) permits for the operation of taxicabs, and that ex-servicemen be given preference in the issuance of such permits; such permits to be issued only to individuals and to be distributed generally through the city.". On January 22, 1946, the commissioner addressed a letter to each of the appellees advising them that his office had surveyed their records and that the Yellow Cab Company had 234 taxicabs and the Checker Taxi Company had 87 taxicabs which had not been operating. He directed that they be placed in operation within five days or the licenses for said cabs would be cancelled.

Appellee Yellow Cab Company filed its complaint for injunction on January 24, 1946. Subsequently, appellee Checker Taxi Company was given leave to appear as a plaintiff. In their complaints as amended, appellees alleged the existence of the various ordinances and actions by the city council and the public vehicle license commissioner,

and in addition, alleged that they had invested several million dollars in taxicab equipment, real estate and property; had acquired contract rights; had complied with all ordinances; had given up licenses under the 1937 ordinance, and had ordered new fleets of taxicabs, relying on their contract rights. They also alleged that the action of the defendants in attempting to cancel their licenses and to issue additional permits, interfered with and violated their contract rights secured to them by the State and Federal constitutions, and would cause irreparable harm, injury and damage to their goodwill, business and investments, and that they had no adequate remedy at law.

The defendants filed a motion to dismiss the complaints and also filed answers to the complaints and amendments thereto. By these pleadings the defendants contended that the complaints were filed prematurely; that no cause of action existed at the time of filing the complaints; that a court of equity had no jurisdiction to restrain a legislative body from exercising its governmental or legislative functions; that the ordinances of 1934, 1937 and 1945, are void; that the city of Chicago does not have authority to prohibit, exclude or limit the number of motor vehicles for hire upon the streets without equal application to all citizens; that said ordinances in effect grant an absolute monopoly denying to all citizens the equal protection of the laws and are contrary to the public policy of the State of Illinois, and constitute class legislation; that said ordinances delegate legislative powers to unnamed individuals to arbitrarily determine if said ordinances would become a law at sometime in the future, and that said ordinances are *ultra vires*, because the city attempted to part with or abdicate its legislative and governmental powers.

After a hearing, the court enjoined the defendants as above set forth. From the evidence it appears that the appellees are unable to operate 321 taxicabs by reason of their inability to obtain repairs and replacement parts for said vehicles. This inability has been occasioned by the

economic restrictions incident to World War II and is beyond the power of appellees to remedy. Appellees operate only vehicles which have been specially constructed for taxicab service and do not use conventionally designed passenger automobiles. It further appears that appellees have made some effort to obtain standard passenger automobiles to replace their fleets, but that in the opinion of appellees and expert witnesses familiar with the maintenance of taxicab fleets, the use of conventionally designed automobiles would be impractical since it would complicate the maintenance of the taxicab fleets inasmuch as parts of one taxicab would not be interchangeable with other taxicabs and mechanics trained to service one make of vehicle could not satisfactorily and economically repair and service other makes of vehicles. It further appears that there are many individuals in the city of Chicago who have obtained on the open market conventionally designed passenger cars which they have converted to suitable taxicab use. It further appears that there are certain advantages to the operation of taxicabs of special construction since they have many specially designed features for the safety, convenience and enjoyment of the passengers, and for easier operation on the public streets. Certain of these features are extra heavy frames, specially constructed bodies, specially designed brakes and steering mechanism, finger guards on door hinges, specially padded partitions, specially designed wheels, tires, ventilators and other features. Their weight is approximately 1000 pounds more than the average passenger car.

The appellants contend in this court that:

1. The trial court has no jurisdiction to enjoin the exercise of the legislative, governmental, and discretionary functions of the city council and public officials.

2. The resolution of the city council requiring 3000 taxicabs be put into service on or before January 15, 1946,

is a valid and proper exercise of the legislative function of the city council.

3. The ordinance of January 16, 1946, authorizing and directing the public vehicle license commissioner to issue 250 permits for operation of taxicabs in the city of Chicago is valid and is a proper exercise of the legislative power of the city council.

4. The ordinances of the city of Chicago of May 18, 1934, December 22, 1937, and June 21, 1945, providing for the issuance of licenses and regulation of the taxicab business in the city of Chicago are null and void.

The appellees contend that the action of the trial court should be affirmed for the following reasons:

The inoperability of 321 taxicabs was beyond the control of appellees and, therefore, no action could be taken by appellants toward the cancelling of such licenses.

2. The action of the city council of January 16, 1946, in authorizing and directing the issuance of 250 permits for the operation of taxicabs in the city of Chicago is void because there is no finding that public convenience and necessity required the issuance of additional taxicab licenses; the ordinance is vague and uncertain, it is discriminatory, does not afford appellees the right to apply for permits or licenses in excess of the 3000 as guaranteed by the 1937 ordinance, and it violates and ignores appellees' contract rights secured by the Federal and State constitutions.

3. The ordinances of 1934, 1937 and 1945 are all valid and constitute binding contracts between the city and appellees.

As to the contention that the trial court had no jurisdiction to grant the injunction in this case on the ground hat it interfered with the exercising of legislative, gov

ernmental and discretionary functions of the city council, we cannot agree. Appellees have not sought to enjoin the city council from acting upon the question of taxicabs and their regulation. Appellees have merely sought to enjoin the city and its officials from taking action based upon ordinances or resolutions of the city council which appellees contend are invalid. The case of *Fletcher* v. *City of Paris,* 377 Ill. 89, cited by appellants and relied upon heavily by them, is authority for the proposition that equity cannot enjoin the holding of an election for the adoption of an ordinance nor can equity enjoin the passage of legislation, inasmuch as the holding of an election is the exercise of a political right and equity will not interfere in a case affecting the enjoyment of political rights where the holding of an election is a necessary step in the legislative process of adopting and bringing into existence a municipal ordinance. Likewise that case holds that inasmuch as the judiciary has no supervision of the legislative branch of the government, courts will not enjoin the passage of legislation, since the restricting power of courts is against the enforcement rather than the passage of unauthorized orders, resolutions or ordinances of municipal corporations. In the case at bar the injunction does not restrict the city council from enacting such ordinances or resolutions as it might care to regarding the regulation of taxicabs in the city of Chicago. It merely restricts the action of the city and the license commissioner, the city clerk and the mayor from taking certain action in the nature of enforcing ordinances or resolutions previously adopted by the city council.

Appellees in this case could properly maintain this action since they are in immediate danger of sustaining direct injury as a result of the enforcement and carrying out of the resolutions of the city council of December 28, 1945, and January 16, 1946. *Fletcher* v. *City of Paris,* 377 Ill. 89.

We cannot agree with appellants' contention that the city of Chicago cannot limit or restrict the number of taxicabs which are to be operated upon the streets of the city of Chicago. In the case of *People ex rel. Johns* v. *Thompson*, 341 Ill. 166, this court had before it for consideration the validity of an ordinance regulating taxicabs, passed September 25, 1929, which contained provisions similar in many respects to the ordinances of 1934, 1937 and 1945, the validity of which are questioned in this proceeding. In that case we upheld the validity of that ordinance and we stated, "The ordinance is not discriminatory on the ground that it singles out taxicabs for regulation and does not apply to private vehicles or other public vehicles drawn by horses. No one has any inherent right to use the streets or highways as a place of business. Where one seeks a special or extraordinary use of the streets or public highways for his private gain, as by the operation of an omnibus, truck, motorbus or the like, the State may regulate such use of the vehicle thereon or may even prohibit such use." We also held in that case that the power of the city to pass the ordinance in question had been authorized under the Cities and Villages Act then in force. We likewise held that the right to regulate includes the right to impose reasonable conditions and restrictions and that the power to regulate the use of streets by vehicles included the power to promote the general welfare and prevent accidents, and that the reasonableness of police regulation is not necessarily what is fairly appropriate under all circumstances. Certainly, the city of Chicago, having the right to regulate traffic and parking, to build bridges, viaducts, tunnels and sewers, to select streets for through or local traffic, to levy a city vehicle tax, to provide for the underground laying of wires or other facilities in the street and to provide for the general policing of the city, could, in the exercise of its powers conferred upon it by the legislature, properly determine the number of taxicabs which it would permit

to be operated in the city of Chicago. Any conclusion other than this would render ineffective the authorizations by the legislature to the city for the regulation of traffic and parking and the policing of the city. It is well known and this court takes judicial notice of the facts that there are numerous congested areas in the city of Chicago and that the very nature of the taxicab business contributes to this traffic congestion.

Appellants contend that the ordinances of 1934, 1937 and 1945, providing for the regulation and licensing of taxicabs in the city of Chicago, are invalid since such ordinances create, or attempt to create, a monopoly in the taxicab business in the city of Chicago. A careful study of the record indicates that at the time of the hearing in this cause there were 348 persons, firms or corporations, including appellees, holding licenses for the operation of 3,000 taxicabs in the city of Chicago. It is true that the vast majority of the 3,000 licenses are held by appellees, however no taxi operator and no person who desires to enter the taxicab business has, in this cause, complained of a monopoly. By these ordinances which are said to create a monopoly the city has reserved the right to fix fares and has the right to inspect the books and records of the various licensees. In addition, the city has reserved the right to issue, when authorized by general ordinance, additional licenses for the operation of taxicabs without the consent of any of the licensees. The sole restriction upon the city's right to issue additional licenses is that there shall be a finding of public convenience and necessity for the additional licenses. In the case of *Capitol Taxicab Co.* v, *Cermak*, 60 F. 2d 608, involving a similar ordinance, the court stated, "To the argument that the ordinance tends to create a monopoly, it is sufficient to answer that the city has not by its legislation surrendered its right to grant other and further certificates to all other applicants."

In the case at bar it is contended that the proviso contained in section 2 of the 1937 ordinance restricts the right of the city to issue additional taxicab licenses only to appellees. Section 2 of the ordinance of 1937 provides, "Notwithstanding Section 1 of this ordinance taxicab licenses in excess of 3,000 may be issued when authorized by general ordinance without consent of licensees under the ordinance of May 18, 1934; provided that such licensees who shall have voluntarily surrendered any taxicab licenses or their right to renewal of any taxicab licenses on or before March 31, 1938, shall have the right to such number of taxicab licenses as were so surrendered, and such right shall be prior to the right of any person, firm or corporation until such licensees who have so surrendered their taxicab licenses shall have either released their right to apply for taxicab licenses or shall have failed to make application therefor within thirty (30) days after publication of notice of public hearing upon the question of public convenience and necessity for the issuance of licenses for taxicabs as provided by ordinance."

The ordinance of 1937 was a general ordinance of general application and merely attempted to provide a method for meeting the difficulties incident to the operation of taxicabs resulting from a period of economic depression. This ordinance was passed for the purpose of establishing proper regulation for the taxicab business in the city of Chicago during a critical period. Anyone holding a taxicab license could have surrendered the same and would have been given protection in regaining the license as afforded by this ordinance. It should be borne in mind that at the time the 1937 ordinance was passed, all taxicab licenses in the city of Chicago did not expire until December 31, 1940, and, therefore, the city of Chicago could not legally at that time reduce the number of taxicab licenses in the city by general ordinance. Conditions demanded that the number of licenses be reduced immediately and in order to secure their reduction, this ordinance granting

a preference to people who voluntarily surrendered licenses was enacted. The proviso giving to licensees surrendering taxicab licenses the right to regain their licenses, when the city of Chicago determines that additional licenses are to be authorized, merely gives to those people a preference for the period of 30 days after the publication of notice of public hearing upon the question of public convenience and necessity. Should these former licensees fail to apply for licenses within that 30-day period, then any one who desires to engage in the taxicab business can obtain a license providing he meets the general requirements of the ordinance. It is clear that no exclusive right to operate taxicabs has been granted to any person or corporation in expressed terms. The fact that appellees may be the only persons who surrendered taxicab licenses and are, therefore, the only persons entitled to the preference does not render the ordinance void, since the ordinance is of general application and since the preference in obtaining additional licenses is given only for a limited time and is based upon a valuable consideration. The city council of the city of Chicago, in the exercise of its legislative discretion, could well have determined that this ordinance was a proper exercise of its police power for the regulation of the taxicab business and the regulation of the traffic and congestion upon its streets. It is not the province of this court to inquire as to the wisdom of passing the ordinance. As long as the same does not violate any constitutional limitation, it is a valid enactment, though the courts might disagree with the wisdom of its provisions.

Appellants have also contended that the ordinances of 1934, 1937 and 1945 do not constitute contracts between the city and the operators of taxicabs, on the ground that the ordinances only confer a license and do not grant a franchise. A review of the authorities indicates that the distinction between a license and franchise has developed mainly by reason of the difference in the type of business performed. In the case of public utilities,

almost without exception, the grant of authority to them to conduct business within the limits of a city is referred to as a franchise. On the other hand, the right of a theatre, garage, restaurant, bowling alley and other businesses to engage in business is referred to as a license. Counsel have pointed out in great detail the distinction between franchises and licenses and have based much weight upon the fact that in a franchise the holder thereof can be compelled to operate his business while in the case of a license the licensee cannot be compelled to operate his business against his will. However, a review of the authorities in other States indicates that the terms "license" and "franchise" have been used often synonymously and that each State has a somewhat different meaning for the two terms.

The question to be determined in the case at bar is whether or not a licensing ordinance can constitute a contract between the city and the licensees. It is the opinion of this court that the licensing ordinances in the case at bar did create a contract between the city and the licensees. In the case of *Peoria Railway Co.* v. *Peoria Railway Terminal Co.*, 252 Ill. 73, we held that the privilege to use the streets of a city having been granted by an ordinance was not recoverable at the will of the city after it had been accepted by the licensee. We also held that where the license had been acted upon in a substantial manner and the revocation thereof would be inequitable, the same could not be revoked. This court in the case of *American Can Co.* v. *Emerson*, 288 Ill. 289, held that a license granted to a foreign corporation to do business in the State of Illinois constitutes a contract between the foreign corporation and the State of Illinois. It being the opinion of this court that the ordinances granting licenses to appellees and others operating taxicabs in the city of Chicago constitute a valid contract between appellees and the city of Chicago, and it being the opinion of the court that such ordinances are not

illegal as being beyond the power of the city to enact, we pass to the question of the delegation of power under the ordinances and we find that the delegation of power to the commissioner herein is not illegal. In the case of *People* v. *Thompson*, 341 Ill. 166, we considered the delegation of power under a similar ordinance regulating taxicabs in the city of Chicago and held that such delegation was proper. The only material difference between the provisions of the ordinance there questioned and the ordinances here, as to the delegation of power, is that in that case the power was given to a commission. We do not regard this difference as being material, inasmuch as proper standards for the action of the commissioner have been established by the ordinances.

Appellants have also contended that the action of the chancellor in holding invalid the order of the city council of January 16, 1946, authorizing the issuance of 250 taxicabs "permits," should be reversed. It is the opinion of this court that this action of the chancellor should likewise be affirmed. In view of the previous finding by the city that public convenience and necessity required the operation of 3000 taxicabs in the city of Chicago, and in view of appellees' admitted inability to keep all of their taxicabs in operation, due to conditions beyond their control, the city could properly provide for the issuance of temporary permits during a critical period when it was impossible to keep in operation all of the taxicabs theretofore licensed. However, the operation of such additional taxicabs authorized by the city council to bring the total number of cabs in operation to the necessary 3000 should be subject to the conditions of the general ordinance regulating the taxicab business in the city of Chicago. Certainly, the temporary permittees should be compelled to charge the same fares, submit to the same regulation and abide by the same safety precautions as provided in the general ordinance. The action of the city council of January 16, 1946, does

not in any way attempt to bring the temporary permittees under the same regulation as other taxicabs operating in Chicago, nor does this action provide for a termination of these permits when taxicab licensees are able to furnish the service which public convenience and necessity requires. The chancellor properly held this action of the city council invalid.

Appellees have raised many other arguments as to the validity and the propriety of the chancellor's action, which have received careful consideration, but, in view of our decision on the points heretofore discused, it would serve no useful purpose to further lengthen this opinion by a piecemeal discussion thereof. For the reasons which we have heretofore stated, the decree of the circuit court of Cook county is affirmed.

Decree affirmed.

Appendix F.

STATE OF ILLINOIS
COUNTY OF COOK. } ss.

IN THE CIRCUIT COURT OF COOK COUNTY.

Yellow Cab Company, a Corporation, *Plaintiff,*
vs.
City of Chicago, a Municipal Corporation, *et al.*, *Defendants.*
No. 46C 943

OPINION BY JUDGE MICHAEL FEINBERG

Complainants, Yellow Cab Company and Checker Taxi Company seek in this representative action on behalf of themselves and others similarly situated an injunction against the City of Chicago, its Mayor, Public Vehicle License Commissioner and City Clerk to restrain them from issuing or causing to be issued any permits or licenses for operation of taxicabs in Chicago under an order or resolution passed by the City Council, January 16, 1946 and from cancelling two hundred thirty-four (234) taxicab licenses previously issued to complainant, Yellow Cab Company and eighty-seven (87) issued to the Checker Company as threatened in a notice to them, sent by the said license commissioner on January 22, 1946.

The hearing before this court is upon the motion of complainants for an injunction, pendente lite, based upon the sworn complaints, as amended, the answers of the defendants and the evidence heard on behalf of the respective parties.

On May 18, 1934 the Council passed a comprehensive ordinance to license and regulate the business of operating taxicabs in the City of Chicago and for the appointment of a Public Vehicle License Commissioner, whose duties and powers are defined by said ordinance.

In this ordinance we find the following provisions:

(a) Definitions of terms used in the ordinance;

(b) For the issuance of licenses to operate taxicabs for a term ending December 31, 1940 unless sooner terminated or revoked as therein provided;

(c) For the payment of a license fee for each taxicab;

(d) For the establishment of taxicab rates to be charged, uniform as to all taxicabs;

(e) Bars discrimination of taxi service to any person in the City limits;

(f) For limitation of the number of passengers to be carried in each cab;

(g) For the required payment of final judgments against licensees;

(h) For the limitation of hours of work of each driver out of each twenty-four hours of the day;

(i) For the reservation of authority to pass all ordinances and regulations affecting the licensees which may be deemed necessary to promote or secure the health, safety, morals, comfort, convenience and general welfare of the public;

(j) (Sec. 6). A proviso that no ordinance or regulation shall authorize the issuance of any license for a taxicab nor any license to be issued hereafter except upon transfer to permit replacement of the taxicab, or in the annual renewal of such license, unless the commission, after a hearing, by resolution shall declare that public convenience

and necessity requires additional taxicab service, and provided further that no license for a taxicab hereafter shall be issued or reissued upon transfer or in renewal of such license unless and until the applicant shall have accepted this ordinance;

(k) Sets up the basis of determination by the commission as to the necessity and public convenience requiring licensing of any taxicab, the qualification of the licensee, and the requirements that the commission hold public hearings upon notice given and the hearing of evidence and objections, if any, before making such determination as to public convenience and necessity;

(l) (Sec. 7). That in the event of discontinuance of service of any taxicab, excepting on account of strikes, acts of God *or causes beyond the control of the licensee*, the commission may given written notice to the licensee to restore such taxicab to service, and the failure to restore such service within five (5) days after notice, the commission in its discretion, may recommend to the Mayor that the license for such taxicab be revoked, and the Mayor in his discretion may revoke same;

(m) The licensee must keep accurate books and accounts of all property, operations, receipts, disbursements in such form and detail as may be required by the commission, the filing of semi-annual reports sworn to by the licensee and access to and inspection by the City and the commission of plants, property, equipment, apparatus, books, records and papers of the licensee;

(n) (Sec. 9). For false representation or fraud in procuring license the commission may in its discretion revoke such license;

(o) (Sec. 10). Failure of licensee to comply with any and all of the provisions of this ordinance and

such failure or default continue for ten (10) days after written notice thereof by the commission, the commission shall report the facts to the Council and the Council may, by resolution, terminate the permission and authority granted the licensee, and the Mayor shall revoke all taxicab licenses held by such licensee;

(p) (Sec. 13). That this ordinance shall be in full force and effect from and after its passage, provided one or more persons, firms or corporations, shall within sixty (60) days after its passage, qualify as a licensee by filing with the City Clerk formal written acceptance of this ordinance.

The complainants as well as many other persons, firms and corporations filed their acceptance of this ordinance as required, and from thence hitherto complainants have operated a fleet of taxicabs in the City. As appears from the sworn complaints and evidence heard, they have invested in property, taxicabs, equipment and incidentals, several millions of dollars. Their fleet of cabs consisted throughout the period of specially constructed cabs and design to insure safety, comfort and convenience for the riding public. They have met the requirements of the commission as to the character of the taxicabs, physical properties, and financial responsibility. It is alleged in the complaints that complainants have complied with all the provisions of this ordinance and subsequent ordinances hereinafter referred to.

Upon recommendation of the commission the Council authorized the issuance of four thousand one hundred eight (4108) taxicab licenses. Of this number Yellow Cab Company applied for and received licenses for twenty-one hundred sixty-six (2166) taxicabs and the Checker Company for fifteen hundred (1500) taxicabs.

On December 22, 1937 the Council passed an ordinance which determined that public convenience and necessity

required the operation of only three thousand (3000) taxicabs in the City and provided for the method of voluntary surrender by licensees of enough of their licenses to reduce the previous number from four thousand one hundred eight (4108) to three thousand (3000). It further provided (Sec. 2) that in the event the number of authorized licenses should later be increased above the three thousand (3000) that the increased number shall be first issued to licensees ratably in the proportion which the number voluntarily surrendered by each licensee bears to the number voluntarily surrendered by all licensees.

Authority of licensees to operate taxicabs under the 1934 ordinance was extended to December 31, 1945, provided the licensees accepted the terms of this ordinance.

In conformity with this letter ordinance Yellow Cab Company voluntarily surrendered five hundred seventy-one (571) of its taxicab licenses to the City and the Checker Company five hundred (500) of its licenses. The balance of the required reduction was supplied by the other licensees operating under the 1934 ordinance.

On May 24, 1945 the Council passed a resolution reciting that an emergency exists because the life expectancy of licensed taxicabs is about three (3) years, and that those operated in the city have exceeded it by more than one and one-half (1½) years due to the war conditions; that there is a critical need for replacement of such taxicab equipment, that practically all authorized three thousand (3000) taxicabs in the City required replacement, that there is no authorization by the War Production Board or Office of Defense Transportation for the manufacture of taxicabs for the years 1945 and 1946, and resolving that the War Production Board and the Office of Defense Transportation establish a program for the manufacture of taxicabs to meet the requirements of the Chicago taxicab licensees. A copy of the resolution was directed to be forwarded to said departments of the United States Government. . . .

On June 21, 1945 the Council passed an extension ordinance extending the term of the ordinance of December 22, 1937 for five (5) years ending December 31, 1950.

On December 28, 1945 the Council passed a resolution reciting that the demand for all forms of local transportation facilities has increased on account of the war and the reconversion from war to peace time economy, and that all public service facilities devoted to the transportation of passengers in the City should be furnished to the utmost capacity, and directing the License Commissioner to enforce the provisions of the taxicab ordinance and to compel full operation of three thousand (3000) taxicabs in the City, and that unless the licensees provide said three thousand (3000) taxicabs by January 15, 1946, he is authorized to take all steps necessary for the licensing of additional taxicabs in the City.

On January 16, 1946, the Council passed the following:—

> "ORDERED, that the Public Vehicle License Commissioner be and he is hereby authorized and directed to issue two hundred fifty (250) permits for the operation of taxicabs and that ex-servicemen be given preference in the issuance of such permits; such permits to be issued only to individuals and to be distributed generally throughout the city."

On January 22, 1946 the Commissioner addressed a letter to each of the complainants advising them that his office had surveyed their records of taxicabs and operations and directed that as to the Yellow Cab Company two hundred thirty-four (234) taxicabs and as to the Checker Company eighty-seven (87) taxicabs listed in the letter, which had not been operated, be placed in operation within five (5) days from said date or the licenses for said cabs would be cancelled and issued to others as provided in the resolution of December 28, 1945.

The passage of the resolution of December 28, 1945, the letter of the commissioner of January 2, 1946, the resolu-

tion or order of the Council of January 16, 1946 and the letter of the Commissioner of January 22, 1946 led to the application for the injunction prayed for in the complaints herein.

An opinion written by the Corporation Counsel of Chicago to the City Council of Chicago, dated September 11, 1945, was submitted to this court on the hearing without objection by the defendants, and was referred to by both sides upon the hearing. The opinion was requested by the chairman of the sub-committee on local transportation of the City Council of Chicago. The opinion appears in the files of the office of the Corporation Counsel of Chicago and is therefore a public record. As such, so far as it has a material bearing upon the issues raised by the pleadings, is without objection properly considered in evidence as a public record. Chapter 51, Sections 14 and 18, Revised Statutes of Illinois. *Carlin* v. *C. & W. I. R. R. Co.*, 297 Ill. 184 at pp. 189-190.

In the opinion referred to, the Corporation Counsel reviewed for the committee on transportation the existing ordinances of Chicago affecting the operation of taxi cabs in the City, the information gathered by the fact-finding departments of the City of Chicago in connection with the operation of taxi cabs in Chicago as well as the transportation problems confronting the City of Chicago, and warned the City Council in no uncertain terms that in his considered judgment under the well-settled law found in the decisions of the Supreme Court of Illinois and listed in his letter, any attempt on the part of the City Council to repeal the ordinance of June 21, 1945, which in turn extended the term of the grant for the operation of taxi cabs in the City of Chicago to December 31, 1950, would be contrary to law and make such an ordinance void.

That a municipality has the power under the "Cities and Villages Act" to regulate the use of its streets and license the operation of taxicabs in the city limits as a part of its

local transportation system and facilities, is too well settled to admit of any controversy. *People* v. *Thompson*, 341 Ill. 166; *Capitol Taxicab Co.* v. *Cermak*, 60 Fed. (2nd) 608; *City* v. *Eagle Taxi Co. et al.*, 273 Ill. App. 614.

The ordinances of 1934, 1937 and June, 1945 are attacked by counsel for defendants as void because, they argue, they create a monopoly, are highly discriminatory and constitute a surrender by the City of its police power to regulate and permit the use of its streets by all persons alike, and that the limitation under the 1934 and 1937 ordinances of the issuance of four thousand one hundred eight (4,108) and three thousand (3,000) licenses respectively is an arbitrary and illegal regulation.

The ordinance of 1934 is not in the opinion of this court open to such objections as to its validity. It provides opportunity for all to apply for licenses. It prescribes the qualifications required, the obligations to be assumed by licensees and for a hearing in the granting or revocation of such licenses.

The fact that the Council authorized a majority of the licenses to be issued to complainants does not make the ordinance vulnerable to attack as creating a monopoly. *People* v. *City*, 349 Ill. 304 at p. 326.

In a city like Chicago with a population of over three and one-half (3½) millions it is conceivable and quite obvious that a chaotic, demoralizing, dangerous and intolerable system of taxicab transportation would result if, either four thousand one hundred eight (4,108) or three thousand (3,000) licenses were issued to that many individuals, each owning or renting his own taxicab; responsible to no employer; working as few or as many hours of the day as he pleased; under no discipline to answer to a call for taxi service; many with no financial responsibility, and with no regular inspection of the physical condition of the taxicab as is to be found in a highly efficient, trained taxicab organization.

The safety, health and general welfare of the public requiring taxi service would be subjected to entirely too dangerous a risk if these supposed conditions existed. To protect which the municipality has the power to make reasonable regulations and restrictions in the use of its streets as it did in the 1934 ordinance. *Capitol Taxicab Co.* v. *Cermak,* 60 Fed. (2nd) 608.

Therefore, the City Council having police powers to protect the public in the operation of taxicabs could not be accused of abusing its discretion by granting the majority of the licenses under the ordinances of 1934 and 1937 to taxicab companies having responsibility, efficiency, equipment and the necessary facilities to safely carry on for the benefit of the public the business of operating taxicabs, instead of issuing all such licenses to each individual. *People* v. *Ci[illegible]supra.*

It is argued by counsel for the defendants that since it appears from the evidence that the Yellow Cab Company has not operated two hundred thirty-four (234) of the cabs shown in the list submitted by the Commissioner in his letter of January 22, 1946, and the Checker Company has not operated eighty-seven (87) of its cabs, therefore it lies in the power of the Commissioner under the resolution of the Council, December 28, 1945, to revoke the licenses as to such taxicabs and issue permits as provided in the order of the City Council dated January 16, 1946.

It appears clearly from the sworn allegations of the complaints and evidence heard, that war time conditions followed by the reconversion period from war to peace time economy has made it impossible for the complainants to procure new taxicabs in place of the number shown to be inoperable, nor to procure enough new parts for replacement in most of said taxicabs. Not only is such fact alleged in the sworn complaints and proven by the evidence, but the City Council itself went on record in its

resolution adopted May 24, 1945 that it knew that the life expectancy of licensed taxicabs was three years, and that many of said taxicabs had been in operation at least a year and a half more than its life expectancy, and that due to the lack of authority from the War Production Board and Office of Defense Transportation it had been impossible for the licensees of taxicabs to replace in operable taxicabs.

Such a public declaration by the City Council in its resolution, if there was nothing more in this record, would be sufficient to relieve the complainants from the penalty threatened by the Commissioner, viz: the revocation of the licenses for the two hundred thirty-four (234) taxicabs of the Yellow Cab Company and eighty-seven (87) of the Checker Company, as indicated in his notice. It proves clearly that the discontinuance of the service of such taxicabs was due to circumstances beyond the control of the licensees as provided in Section 7 of the ordinance of 1934. In addition to this the Commissioner by his notice of January 22, 1946 threatened to usurp the power of revocation, which under the ordinance of 1934 (Sections 7 & 10) and not changed by subsequent ordinances, belonged to the City Council and to the Mayor of Chicago and only after notice and hearing to the licensee as provided in said ordinance. It is clear that no such hearing was had nor opportunity for hearing given the licensee to explain why the number of taxicabs listed in the letter of the Commissioner to the complainants could not be operated or replaced by new taxicabs. It does appear, however, from the evidence that since the notice given by the Commissioner twenty-one (21) of the two hundred thirty-four (234) cabs of the Yellow Company were placed back in service and thirty (30) of the said taxicabs of the Checker Company were placed back in service. It further appears from the evidence that since the end of war hostilities, and conversion from war to peace time economy, it has been possible to expedite to a limited degree the replacement

and return of some of the inoperable taxicabs. This court must take judicial notice also, and it so appears from the evidence, that the pending steel strike in the nation has seriously interfered with the procurement of necessary new parts for replacement in taxicabs and will continue to so interfere with such procurement during said strike.

Were the Commissioner to carry out his threat contained in his letter of January 22, 1946, it would be clearly contrary to the provisions of the 1934 ordinance, and result in serious injury to the contract rights and property investment of the complainants herein. Against such arbitrary action of the Commissioner so threatened the complainants are not without relief and a court of equity under the authorities cited has the power to prevent such illegal action on the part of the Commissioner.

It is argued, however, for the defendants, upon this hearing, that the resolution of the Council adopted December 28, 1945 and the order or resolution passed by the Council January 16, 1946 is sufficient authority for the Commissioner to act in accordance with his notice to the complainants to revoke such licenses.

The 1934 ordinance, when accepted by the complainants and the other licensees, became a contract between the City and the licensees. In *People* v. *Chicago Telephone Co.*, 245 Ill. 121, the Supreme Court in passing upon the effect of a license to use the public streets and alleys said:

> "* * * In granting to the Chicago Telephone Company a license to construct its poles, wires and other fixtures in the streets and alleys of the town, the board of trustees of the town of Cicero was exercising the power to regulate and control the use of the streets and alleys within the limits of the town which has been delegated to it by the General Assembly. It was exercising a legislative function as a governmental agency of the State, and the grant was made by the town in its governmental and not in its proprietary capacity.

"The grant thus made was a license which, when accepted by the telephone company, became a contract between the town, as a governmental agency of the State, and the telephone company.

"Neither the town of Cicero nor any other municipality succeeding to its governmental powers over the streets and alleys of the territory then included within the town of Cicero, or any part thereof, had or could have any right to repudiate the contract or take back the grant without the consent of the telephone company; * * * likewise the telephone company would have no right to repudiate the contract or avoid the obligations imposed upon it by the ordinance without the consent of the governmental agency in control of the streets and alleys in which it desired to continue to maintain and construct its poles, wires and other fixtures."

To the same effect is *Springfield* v. *Inter-State Telephone Co.*, 279 Ill. 324, where it is said:

"* * * When the privilege of the use of a street is granted by an ordinance which is accepted and acted upon by the grantee, it becomes a contract binding upon the city, from which it cannot recede. (*Chicago Municipal Gas Light Co.* v. *Town of Lake*, 130 Ill. 42; *City of Belleville* v. *Citizens' Horse Railway Co.*, 152 id. 171; *Village of Madison* v. *Alton, Granite and St. Louis Traction Co.*, 235 id. 346.)"

If the ordinance of 1934 be considered a contract between the City and the licensees, then such a contract may not be terminated, except in the manner prescribed by the ordinance as already indicated. Hence the passage of the order or resolution adopted by the Council January 16, 1946 likewise is an unauthorized and illegal interference with the contract rights of the parties prescribed by the 1934 ordinance.

Moreover the so-called order or resolution of January 16, 1946 is void for uncertainty, vagueness and lacking wholly in setting up any standard of qualification for the

permittees to operate taxicabs, nor does it make the issuance of the permits subject to any of the provisions, obligations and liabilities required of the licensees in the ordinance of 1934. There is no condition imposed by this order upon the permittees to comply with any of the provisions of the 1934 ordinance, which in no way has been changed in its essential provisions by any of the subsequent ordinances already referred to. It is unthinkable that permittees, whoever they be, would be permitted to operate taxicabs in Chicago without requiring them for the protection of the public, to qualify under the 1934 and 1937 ordinances.

Counsel for defendants with commendable frankness have admitted that if their objections to the validity of the 1934 and 1937 ordinances are sound, then the order or resolution of the Council adopted January 16, 1946 is likewise invalid.

It is unfortunate that the City Council should have ignored the opinion of the Corporation Counsel furnished to it as early as September, 1945 warning them of the invalidity of their contemplated action to pass any ordinance which would interfere with the grant to licensees under the 1934 ordinance, and should have proceeded as it did to pass the order of January 16, 1946 authorizing the issuance of two hundred fifty (250) permits to operate taxicabs..

This court feels that the City Council was not justified in proceeding upon such questionable grounds of validity of which they had ample warning by the Corporation Counsel, and thereby build up false hopes of returning veterans as to their right to a permit to operate a taxicab under such an order.

The order of January 16, 1946 is clearly invalid and cannot be justified under any of the settled rules of law governing contract ordinances, such as the one of 1934 and 1937. *Brooklyn City Railway Co.* v. *Whalen,* 182 N. Y. Supplement 283.

If these complainants or any of the licensees under the 1934 ordinance or 1937 ordinance have violated the provisions of those ordinances or failed to comply with its provisions, it is open to the City authorities under those ordinances to revoke the licenses granted, provided only that it is done in accordance with the procedure outlined in these ordinances. To proceed otherwise would be a deprivation of the contract rights of the licensees under those ordinances and result in serious loss to such licensees, to prevent which this court has the power to act.

Only in the exact administration of the law will justice in the long run be done and the confidence of the people in the courts be maintained.

It follows from what has been said that the complainants are entitled to an injunction, pendente lite, as prayed for in the complaints, and accordingly it is so ORDERED.

pp. 1, 2, 3, 4, 5, 9, 10.

SUPREME COURT OF THE UNITED STATES

No. 1035.—October Term, 1946.

The United States of America, Appellant, *v.* Yellow Cab Company, Chicago Yellow Cab Company, Inc., Parmalee Transportation Company, et al.	On Appeal From the District Court of the United States for the Northern District of Illinois.

[June 23, 1947.]

Mr. Justice Murphy delivered the opinion of the Court.

The United States filed a complaint in the federal district court below pursuant to § 4 of the Sherman Anti-Trust Act, 26 Stat. 209, as amended, to prevent and restrain the appellees from violating §§ 1 and 2 of the Act. The complaint alleged that the appellees have been and are engaged in a combination and conspiracy to restrain and to monopolize interstate trade and commerce (1) in the sale of motor vehicles for use as taxicabs to the principal cab operating companies in Chicago, Pittsburgh, New York City and Minneapolis, and (2) in the business of furnishing cab services for hire in Chicago and vicinity. The appellees moved to dismiss the complaint for failure to state a claim upon which relief might be granted. That motion was sustained. 69 F. Supp. 170. The case is now here on direct appeal by the United States. 330 U.S. —.

The alleged facts, as set forth in the complaint, may be summarized briefly. In January, 1929, one Morris Markin and others commenced negotiations to merge the more important cab operating companies in Chicago, New York and other cities. Markin was then president and

general manager, as well as the controlling stockholder, of the Checker Cab Manufacturing Corporation (CCM). That company was engaged in the business of manufacturing taxicabs at its factory in Kalamazoo, Michigan, and shipping them to purchasers in various states.

Parmelee Transportation Company (Parmelee) was organized in April, 1929, with 62% of its stock being owned by CCM. It promptly took over the business of operating special unlicensed cabs to transport passengers and their luggage between railroad stations in Chicago, pursuant to contracts with railroads and railroad terminal associations. It then acquired a controlling interest in the Chicago Yellow Cab Company, Inc. (Chicago Yellow). This latter company holds all the capital stock of Yellow Cab Company (Yellow), the owner and operator of "Yellow" cabs in Chicago and vicinity. Yellow presently holds 53% of the taxicab licenses outstanding in Chicago. In addition, Parmelee acquired or organized subsidiary companies which now hold 100% of the taxicab licenses outstanding in Pittsburgh, 58% of those in Minneapolis, and 15% of those in New York City.[1]

In January, 1930, Cab Sales and Parts Corporation (Cab Sales) was incorporated. At all times, Markin has been the sole stockholder and the active manager of this company. It now owns and operates the "Checker" cabs in Chicago and vicinity, using licenses held in the name

[1] Between October, 1929, and June, 1930, Parmelee acquired all the taxicab companies operating in Pittsburgh; it now operates the cabs through two wholly owned subsidiaries. Early in 1931, Parmelee formed a company to operate cabs in Minneapolis; a wholly owned subsidiary now operates 125 of the 214 cabs licensed in that city. Beginning early in 1929, Parmelee acquired certain companies operating cabs in New York City; it later consolidated them in a wholly owned subsidiary now holding 2,000 of the 13,000 licenses outstanding in that city.

; since 1934, he has been the sole stockholder,

of Checker Taxi Company (Checker).[2] Checker presently has no employees and no property other than 1,000 Chicago taxicab licenses, *or one-third of the total outstanding*, which it leases to Cab Sales; nearly all of its stock is owned by associates of Markin.[3]

Markin also obtained a substantial interest in the DeLuxe Motor Cab Company, which was the third largest cab operating company in Chicago in 1929 with its 400 licenses. He caused all of its stock to be sold to Parmelee. It was then consolidated into a new company; in 1932, Cab Sales bought a controlling interest in this consolidated concern and caused it to suspend operations. Thus, by the end of 1932, Markin had gained control of the three largest taxicab companies operating in Chicago and, through Parmelee, had substantial footholds in the taxicab business in New York City, Pittsburgh and Minneapolis.

Yellow and Checker have consistently held a vast majority of the Chicago taxicab licenses. There were 5,289 licenses outstanding in January, 1929, of which Yellow held 2,335 (44%) and Checker 1,750 (33%). In Sep-

[2] Checker originally was a cooperative company, the stockholders of which were the various owners of "Checker" cabs. In February, 1930, as part of a settlement of litigation between it and CCM, Checker agreed that its drivers would purchase all of their taxicabs from Cab Sales for a period of five years at $2,350 per cab. At the same time, CCM appointed Cab Sales as exclusive agent for these sales and agreed to sell its cabs to Cab Sales at $1,906 per cab. During the five-year life of this agreement, Checker drivers bought a large number of cabs from Cab Sales at prices about $400 above those at which Cab Sales bought them from CCM. As these drivers defaulted in their payments from time to time, Cab Sales would foreclose and take over the ownership and operation of the cabs. Since 1941, it has owned and operated all of these cabs.

[3] By 1932, Cab Sales had acquired over 97% of the stock of Checker. Markin caused this stock to be sold to certain of his associates in 1942.

tember, 1929, the City of Chicago adopted an ordinance to the effect that no more licenses should be issued, except for renewals, unless it should be found that the public convenience and necessity required otherwise. The substance of this provision was repeated in an ordinance adopted in May, 1934. Yellow and Checker subsequently made agreements to reduce the number of cabs in operation and to induce the city to lower the number of licenses outstanding to 3,000, of which Yellow would hold 1,500 and Checker 1,000.

On December 22, 1937, the City of Chicago passed an ordinance providing for a method of voluntary surrender by licensees of a sufficient number of their licenses to reduce the number outstanding to 3,000. It was also provided that if the number of authorized licenses should later be increased above the 3,000 figure, such additional licenses should first be issued to the original licensees in proportion to, and up to, the number which they had surrendered. Yellow and Checker then made an agreement to implement this ordinance. Yellow agreed to surrender 571 licenses (leaving it with 1,595) and Checker agreed to surrender 500 (leaving it with 1,000); both parties promised to attempt to secure for Yellow 60% and for Checker 40% of any licenses in excess of 3,000 which the city might later issue. ~~Other licensees surrendered the balance of the required reduction, leaving 3,000 licenses outstanding.~~

On January 16, 1946, the city authorized the issuance of 250 licenses to war veterans. Yellow was notified that 234 of its licenses, representing that number of cabs which had not been in operation, would be canceled. Checker was given a similar notice as to 87 licenses. Yellow and Checker then brought suit in an Illinois court to enjoin the city from issuing the new licenses and from canceling any of the ones issued to them; they claimed that economic conditions prevented them from procuring taxicabs

As a result, 3,000 licenses were left outstanding.

to replace those which had become inoperable. The Illinois courts held that the 1937 ordinance created a contract between the city and the licensees and that the city could not issue licenses to the war veterans without first replacing the licenses which Yellow and Checker had surrendered; it was further held that no monopoly existed, since the number of licenses and the rights of the licensees were subject to the control of the city. *Yellow Cab Co. v. City of Chicago*, 396 Ill. 388, 71 N. E. 2d 652.

Such is the nature of the facts set forth in the complaint. Those facts allegedly give rise to a combination and conspiracy on the part of the appellees (Yellow, Chicago Yellow, Parmelee, Cab Sales, Checker, CCM and Markin) in violation of the Sherman Act. The problems thereby raised can best be considered in relation to the purported terms of this combination and conspiracy. For present purposes, of course, we must assume, without deciding or implying, that the various facts and allegations in the complaint are true.

I.

It is said that the appellees have agreed to control the operation and purchase of taxicabs by the principal operating companies in Chicago, New York City, Pittsburgh and Minneapolis, insisting that they purchase their cabs exclusively from CCM. This excludes all other manufacturers of taxicabs from 86% of the Chicago market, 15% of the New York City market, 100% of the Pittsburgh market and 58% of the Minneapolis market. At the same time, the trade of the controlled cab companies is restrained since they are prevented from purchasing cabs from manufacturers other than CCM. The result allegedly is that these companies must pay more for cabs than they would otherwise pay, their other expenditures are increased unnecessarily, and the public is charged high rates for the transportation services rendered.

The commerce which is asserted to be restrained in this manner has a character that is undeniably interstate. The various cab operating companies do business in Illinois, New York, Pennsylvania and Minnesota. By virtue of the conspiracy, they must purchase all of their cabs from CCM. Since CCM's factory is located in Michigan, interstate sales and shipments are inevitable if the conspiracy is to be effectuated. The conspiracy also prevents those operating companies from purchasing cabs from other manufacturers, thus precluding all interstate sales and shipments between each individual cab operating company and manufacturers (other than CCM) located in other states. Interstate trade, in short, is of the very essence of this aspect of the conspiracy.

But the amount of interstate trade thus affected by the conspiracy is immaterial in determining whether a violation of the Sherman Act has been charged in the complaint. Section 1 of the Act outlaws unreasonable restraints on interstate commerce, regardless of the amount of the commerce affected. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, note 59, p. 225; *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 485. And § 2 of the Act makes it unlawful to conspire to monopolize "any part" of interstate commerce, without specifying how large a part must be affected. Hence it is enough if some appreciable part of interstate commerce is the subject of a monopoly, a restraint or a conspiracy. The complaint in this case deals with interstate purchases of replacements of some 5,000 licensed taxicabs in four cities.[4] That is an appreciable amount of commerce under any standard. See *Montague & Co.* v. *Lowry*, 193 U. S. 38.

Likewise irrelevant is the importance of the interstate commerce affected in relation to the entire amount of that type of commerce in the United States. The Sherman

[4] 2,595 licenses in Chicago, 2,000 in New York City, 125 in Minneapolis, and an estimated 280 in Pittsburgh.

Act is concerned with more than the large, nation-wide obstacles in the channels of interstate trade. It is designed to sweep away all appreciable obstructions so that the statutory policy of free trade might be effectively achieved. As this Court stated in *Indiana Farmer's Guide Co.* v. *Prairie Farmer Co.*, 293 U. S. 268, 279, "The provisions of §§ 1 and 2 have both a geographical and distributive significance and apply to any part of the United States as distinguished from the whole and to any part of the classes of things forming a part of interstate commerce." It follows that the complaint in this case is not defective for failure to allege that CCM has a monopoly with reference to the total number of taxicabs manufactured and sold in the United States. Its relative position in the field of cab production has no necessary relation to the ability of the appellees to conspire to monopolize or restrain, in violation of the Act, an appreciable segment of interstate cab sales. An allegation that such a segment has been or may be monopolized or restrained is sufficient.

Nor can it be doubted that combinations and conspiracies of the type alleged in this case fall within the ban of the Sherman Act. By excluding all cab manufacturers other than CCM from that part of the market represented by the cab operating companies under their control, the appellees effectively limit the outlets through which cabs may be sold in interstate commerce. Limitations of that nature have been condemned time and again as violative of the Act. *Associated Press* v. *United States*, 326 U. S. 1, 18–19, and cases cited. In addition, by preventing the cab operating companies under their control from purchasing cabs from manufacturers other than CCM, the appellees deny those companies the opportunity to purchase cabs in a free, competitive market.[5] The Sherman

[5] To the extent that the controlled operating companies are charged higher than the open market prices, they are injured.

Act has never been thought to sanction such a conspiracy to restrain the free purchase of goods in interstate commerce. See *Montague & Co.* v. *Lowry, supra; Binderup* v. *Pathe Exchange*, 263 U. S. 291.

The fact that these restraints occur in a setting described by the appellees as a vertically integrated enterprise does not necessarily remove the ban of the Sherman Act. The test of illegality under the Act is the presence or absence of an unreasonable restraint on interstate commerce. Such a restraint may result as readily from a conspiracy among those who are affiliated or integrated under common ownership as from a conspiracy among those who are otherwise independent. Similarly, any affiliation or integration flowing from an illegal conspiracy cannot insulate the conspirators from the sanctions which Congress has imposed. The corporate interrelationships of the conspirators, in other words, are not determinative of the applicability of the Sherman Act. That statute is aimed at substance rather than form. See *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 360–361, 376–377.

And so in this case, the common ownership and control of the various corporate appellees are impotent to liberate the alleged combination and conspiracy from the impact of the Act. The complaint charges that the restraint of interstate trade was not only effected by the combination of the appellees but was the primary object of the combination. The theory of the complaint, to borrow language from *United States* v. *Reading Co.*, 253 U. S. 26, 57, is that "dominating power" over the cab operating companies "was not obtained by normal expansion to meet the demands of a business growing as a result of superior and enterprising management, but by deliberate, calculated purchase for control." If that theory is borne out in this case by the evidence, coupled with proof of an undue restraint of interstate trade, a plain violation of the Act has occurred. Cf. *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 189.

II.

It is said that the appellees have agreed that Yellow and Cab Sales will not compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers and their luggage between railroad stations in Chicago. The complaint points out the well-known fact that Chicago is the terminus of a large number of railroads engaged in interstate passenger traffic and that a great majority of the persons making interstate railroad trips which carry them through Chicago must disembark from a train at one railroad station, travel from that station to another some two blocks to two miles distant, and board another train at the latter station. The railroads often contract with the passengers to supply between-station transportation in Chicago. Parmelee then contracts with the railroads and the railroad terminal associations to provide this transportation by special cabs carrying seven to ten passengers. Parmelee's contracts are exclusive in nature.

The transportation of such passengers and their luggage between stations in Chicago is clearly a part of the stream of interstate commerce. When persons or goods move from a point of origin in one state to a point of destination in another, the fact that a part of that journey consists of transportation by an independent agency solely within the boundaries of one state does not make that portion of the trip any less interstate in character. *The Daniel Ball*, 10 Wall. 557, 565. That portion must be viewed in its relation to the entire journey rather than in isolation. So viewed, it is an integral step in the interstate movement. See *Stafford* v. *Wallace*, 258 U. S. 495.

Any attempt to monopolize or to impose an undue restraint on such a constituent part of interstate commerce brings the Sherman Act into operation. Here there is an alleged conspiracy to bring nearly all the Chicago taxicab companies under common control and to eliminate com-

petition among them relative to contracts for supplying transportation for this transfer in the midst of interstate journeys. Only Parmalee is free to attempt to procure such contracts; Yellow and Cab Sales are forbidden to compete for such contracts, despite the fact that they conceivably might provide the same transportation service at lower cost to the railroads.[6] The complaint accordingly states a violation of the Sherman Act in this respect. See *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211.

It is true, of course, that exclusive contracts for the transportation service in question are not illegal. *Donovan* v. *Pennsylvania Co.*, 199 U. S. 279. But a conspiracy to eliminate competition in obtaining those exclusive contracts is what is alleged in this case and it is a conspiracy of that type that runs afoul of the Sherman Act. Moreover, the fact that the competition restrained is that between affiliated corporations cannot serve to negative the statutory violation where, as here, the affiliation is assertedly one of the means of effectuating the illegal conspiracy not to compete.

III.

Finally, it is said that the appellees have conspired to control the principal taxicab operating companies in Chicago and to exclude others from engaging in the transportation of interstate travelers to and from Chicago railroad stations. To that end, they have conspired to induce the City of Chicago to limit the number of licensed taxicabs to 3,000, to hold 2,595 (or 86%) of these licenses themselves, to obtain for Yellow and Checker any licenses

[6] The District Court thought that Parmalee's equipment and services are so totally different from the taxicab business of Yellow and Cab Sales as to make competition for the contracts impractical and unlikely. But that is a matter for determination at the trial on the merits and does not negative the sufficiency of the complaint.

above 3,000 which the city might later issue, and to prevent new operators from entering the cab business in Chicago by having Yellow and Checker annually renew licenses for cabs which they do not operate and have no intention of operating.

The interstate commerce toward which this aspect of the conspiracy is directed is claimed to arise out of the following facts. Many persons are said to embark upon interstate journeys from their homes, offices and hotels in Chicago by using taxicabs to transport themselves and their luggage to railroad stations in Chicago. Conversely, in making journeys from others states to homes, offices and hotels in Chicago, many persons are said to complete such trips by using taxicabs to transport themselves and their luggage from railroad stations in Chicago to said homes, offices and hotels. Such transportation of persons and their luggage is intermingled with the admittedly local operations of the Chicago taxicabs. But it is that allegedly interstate part of the business upon which rests the validity of the complaint in this particular.

We hold, however, that such transportation is too unrelated to interstate commerce to constitute a part thereof within the meaning of the Sherman Act. These taxicabs, in transporting passengers and their luggage to and from Chicago railroad stations, admittedly cross no state lines; by ordinance, their service is confined to transportation "between any two points within the corporate limits of the City." None of them serves only railroad passengers, all of them being required to serve "every person" within the limits of Chicago. They have no contractual or other arrangement with the interstate railroads. Nor are their fares paid or collected as part of the railroad fares. In short, their relationship to interstate transit is only casual and incidental.

In a sense, of course, a traveler starts an interstate journey when he boards a conveyance near his home,

office or hotel to travel to the railroad station, from which the journey is continued by train; and such a journey ends when he alights from a conveyance near the home, office or hotel which constitutes his ultimate destination. Indeed, the terminal points of an interstate journey may be traced even further to the moment when the traveler leaves or enters his room or office and descends or ascends the building by elevator.

But interstate commerce is an intensely practical concept drawn from the normal and accepted course of business. *Swift & Co.* v. *United States*, 196 U. S. 375, 398; *North American Co.* v. *S. E. C.*, 327 U. S. 686, 705. And interstate journeys are to be measured by "the commonly accepted sense of the transportation concept." *United States* v. *Capital Transit Co.*, 325 U. S. 357, 363. Moreover, what may fairly be said to be the limits of an interstate shipment of goods and chattels may not necessarily be the commonly accepted limits of an individual's interstate journey. We must accordingly mark the beginning and end of a particular kind of interstate commerce by its own practical considerations.

Here we believe that the common understanding is that a traveler intending to make an interstate rail journey begins his interstate movement when he boards the train at the station and that his journey ends when he disembarks at the station in the city of destination. What happens prior or subsequent to that rail journey, at least in the absence of some special arrangement, is not a constituent part of the interstate movement. The traveler has complete freedom to arrive at or leave the station by taxicab, trolley, bus, subway, elevated train, private automobile, his own two legs or various other means of conveyance. Taxicab service is thus but one of many that may be used. It is contracted for independently of the railroad journey and may be utilized whenever the traveler so desires. From the standpoints of time and continuity, the taxicab trip may be quite dis-

tinct and separate from the interstate journey. To the taxicab driver, it is just another local fare.

Pennsylvania R. Co. v. *Knight*, 192 U. S. 21, demonstrates this common understanding. The Court there held that the Pennsylvania Railroad Company was subject to a state franchise tax by reason of the fact that it maintained a cab service within the boundaries of New York City for the sole benefit of its rail passengers. Its cabs transported the passengers between its ferry station and their residences and hotels. The Court stated that this cab service was an independent local service, preliminary or subsequent to any interstate transportation and not included in the contract of railroad carriage. Hence it was subject to state taxation. It is true that this ruling as to the extent of a state's taxing power is not conclusive as to the boundaries of interstate commerce for federal purposes. *Bacon* v. *Illinois*, 227 U. S. 504, 516; *Binderup* v. *Pathe Exchange*, *supra*, 311. But it does illustrate the normal and accepted concept of the outer limits of this type of interstate journey. And it is that concept that is determinative here.

We do not mean to establish any absolute rule that local taxicab service to and from railroad stations is completely beyond the reach of federal power or even beyond the scope of the Sherman Act. In *Stafford* v. *Wallace*, *supra*, 528, the Court made plain that nothing in the *Knight* case was authority for the proposition that "if such an agency [local cab service] could be and were used in a conspiracy unduly and constantly to monopolize interstate passenger traffic, it might not be brought within federal restraint." Likewise, we are not to be understood in this case as deciding that all conspiracies among local cab drivers are so unrelated to interstate commerce as to fall outside the federal ken. A conspiracy to burden or eliminate transportation of passengers to and from a railroad station where interstate journeys begin and end might have sufficient effect upon interstate commerce

to justify the imposition of the Sherman Act or other federal laws resting on the commerce power of Congress.

All that we hold here is that when local taxicabs merely convey interstate train passengers between their homes and the railroad station in the normal course of their independent local service, that service is not an integral part of interstate transportation. And a restraint on or monopoly of that general local service, without more, is not proscribed by the Sherman Act.

It follows that the complaint, insofar as it is based on such local taxicab service, fails to state a cause of action under the Sherman Act. It thus becomes unnecessary to discuss the points raised as to the substance of that part of the alleged conspiracy relating to this local service. Our conclusion in this respect, however, does not lead to an affirmance of the District Court's dismissal of the complaint. For the reasons set forth in Parts I and II of this opinion, the complaint does state a cause of action under the Act, entitling the United States to a trial on the merits. Since the portion of the complaint dealt with in Part III of this opinion is defective, appropriate steps should be taken to delete the charges in relation thereto. With that understanding, we reverse the judgment of the District Court and remand the case for further proceedings consistent with this opinion.

Reversed.

MR. JUSTICE BLACK and MR. JUSTICE RUTLEDGE agree with Parts I and II of this opinion but dissent from the holding in Part III.

MR. JUSTICE BURTON concurs in Part III of this opinion. However, he believes that the complaint as a whole fails to state a cause of action and that, therefore, the judgment of the District Court dismissing it should be affirmed.

MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case.